

Basis Statement
Provisionally Adopted Chapter 23 Rule
Standards for Timber Harvesting to Substantially
Eliminate Liquidation Harvesting

Major Substantive Rule

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Department of Conservation
Maine Forest Service
Forest Policy & Management Division
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Augusta, ME 04333-0022

Introduction

The statutory authority for this provisionally adopted rule is 12 MRSA section, chapter 805, sub-chapter 3-A, as amended by the 121st Maine Legislature by 2003 Public Law, chapter 422. The law requires the Commissioner of Conservation to “adopt rules to substantially eliminate liquidation harvesting by requiring measures that include, without limitation, increased professional involvement in planning and implementation of timber harvesting activities on forest lands.” Because a number of commenters interpret this statute and the legislative intent in a manner different from that of the department, and in fact continue to disagree with the premise for the rulemaking, an examination of the statute and its legislative history is necessary to clarify how the department attempted to meet its mandates.

Acting on behalf of the department, the Maine Forest Service (MFS) received many comments on this proposal, ranging from support - with encouragement to make the rule more restrictive - to strong opposition to many elements of the proposal. MFS also received a number of comments rejecting the basic premise of the legislative directive contained in the enabling statute, contending that the present system of forest practices regulation is adequate.

In undertaking to meet the legislative mandate, MFS has targeted the proposed rule at the behavior of greatest public concern, and limited the extent and impact of unintended consequences on forest landowners interested in long-term management. Based on comments received during the public comment period, MFS has adjusted the rule somewhat. The provisionally adopted rule represents MFS’s best effort to balance the competing interests involved in order to, as directed by the Legislature, “substantially eliminate liquidation harvesting.” Moreover, additional flexibility is further provided by the economic hardship provision contained in Section 6.C. and the variance provision contained in Section 8 of the proposed rule.

“Require that timber harvesting activities be conducted with attention to long-term forest management principles.”

The statute directs that the rule require timber harvesting activities be conducted with attention to long-term forest management principles. The rule offers two principal options and a third, very limited option. One option requires that timber harvesting subject to the rule conform to a timber harvest plan (THP) that addresses many of the principles of long-term forest management. A licensed forester would be required to prepare or approve the THP, and a licensed forester would be required to certify that any harvesting conformed to the THP.

MFS considers the following the core principles of long-term forest management:

- Maintaining or improving the productivity of forest stands;
- Maintaining the productivity of forest soils;
- Practicing a high degree of utilization;
- Maintaining wildlife habitats and biological diversity; and,

- Protection of water quality, wetlands, and riparian areas.

Not all of the principles lend themselves well to developing enforceable standards; however, MFS attempted to incorporate the key principles, particularly those affecting public trust resources, into the THP requirements. Requiring significant forester involvement in the planning and execution of a harvest is aimed at increasing attention to the principles of long-term forest management.

The second option as originally proposed set a maximum removal of 40% of the pre-harvest basal area. MFS developed this option for those landowners who did not want to hire a forester and for situations where harvesting would not remove most or all of the original stand.

A third, limited option, allows landowners who find themselves in an economic bind to apply to MFS for an economic hardship exemption if, for example, they had purchased a property with the intent to hold it long-term and harvested it heavily to recoup their investment, but unforeseen economic circumstances necessitated a sale within the 5-year holding period. A few commenters felt that this process would not be fairly administered by MFS, but offered no substantive suggestions for improvement.

A number of commenters felt that the THP standards were too strict and/or too subjective. Some commenters felt that the THP standards needed to be strengthened in some areas. Many commenters believed that the 40% limitation on basal area removal was too strict and would lead to high-grading.

In response to the comments, MFS modified the standards for the first two options as follows:

The THP option was revised to clarify the requirements for a silvicultural rationale and to limit consideration of biodiversity issues to known occurrences of threatened and endangered species, rare or exemplary plant communities, and regulated habitats, specifically significant wildlife habitat and essential wildlife habitat as identified in existing state law. Some additional technical specifications for the THP map were added as well.

The basal area removal threshold was set at 50% - with a prohibition on high-grading - to allow a reasonable level of timber harvesting without compromising the purpose of the rule.

MFS also added a third option that would allow timber harvesters and Licensed Foresters who successfully complete a training program in timber harvest planning, layout, and operations course accredited by MFS and who meet certain other requirements to conduct timber harvests outside of the guidelines for the "light removal" or THP options.

"Include Appropriate Exemptions..."

The enabling legislation directed that the rule "include appropriate exemptions, including, but not limited to, exemptions for landowners and land managers with independent 3rd-party certification, harvests covering small acreages and permitted land conversions." MFS developed a rule with 10 exemptions, including those listed. The

exemptions cover circumstances where MFS believes that liquidation harvesting will not be practiced (e.g., certified lands), or where the acreages involved are insignificant (e.g., conveyances due to inheritance, court order, etc.). The exemptions also were designed to target the rule on the behavior of greatest concern. Together, the proposed exemptions would exclude significant majorities of landowners, land managers, and acres harvested from the rule's requirements while maintaining consistency with the legislative intent.

Some commenters offered specific suggestions about amendments to the exemptions; those are addressed later in this document. A few commenters felt that the rules offered too many exemptions, or too few. Those suggestions are addressed later as well. In general, comments focused on the certification and land use conversion exemptions. The conservation community felt that the certification exemption was too loosely written and that it would allow liquidation harvesting to occur without regulatory oversight. Some landowners felt that the certification exemption was too strict as originally proposed and would force them to incur additional costs, as they would need to obtain an additional regulatory compliance audit in addition to the standard conformance audit.

MFS believes that it has struck an appropriate balance in developing the list of exemptions. Some exemptions respond directly to the legislative direction; others are intended to ensure that the rule is, as promised, tightly targeted on the behavior of greatest concern.

In response to public comments, MFS added two exemptions, for certified resource managers (an omission in the original rule), and harvesting for the landowner's personal use. The certification exemption was simplified in response to comments from the regulated community, and the Certified Master Logger exemption was expanded to apply to 1,000 acre parcels.

“Apportion Appropriate Legal Responsibilities...”

The statute also required that the rule “apportion appropriate legal responsibilities to landowners, foresters, and loggers for compliance with the rule.” MFS defined “responsible party” and established that all responsible parties would be jointly and severally liable for compliance with and liable for violations of the rule. A few commenters expressed concern that certain named responsible parties might be held responsible for actions in which they had no part, for example, loggers who might be held liable for harvesting according to a THP that did not comply with the rule. MFS does not intend to make all parties liable for every violation. The language in the rule was developed to allow MFS to prosecute parties other than the landowner if the facts of a particular case indicated that either the forester or the logger, or both, were culpable for a violation. MFS responds more specifically to these concerns later in this document.

Consultation with DEP and DIFW

The statute required that the department consult with the Commissioners of DEP and DIFW to ensure the rule's consistency with environmental and wildlife habitat protection.

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DEP staff participated in the rulemaking Stakeholder Group process and expressed their support for the proposed rule. DIFW elected not to participate in the process; however, DIFW staff were kept informed of all proceedings. DIFW expressed concern about the agency's ability to respond to requests for information about certain wildlife habitats (per the THP requirements); however, the agency did not oppose or identify any shortcomings in the proposed rule. The revised THP standards do not require landowner consultation with DIFW, so this concern has been addressed.

Summary

The department received many comments on this proposal, ranging from support - with encouragement to make the rule more restrictive - to strong opposition to many elements of the proposal. Some commenters believe the proposal represents an overreaching of the statutory mandate, unnecessary state meddling in private enterprise, and/or a taking of private property. The department also received a number of comments rejecting the basic premise of the legislative directive contained in the enabling statute and contending that current forest practices regulations suffice to protect the public's interests in Maine's forests.

The department believes that the proposed rule targets the behavior of greatest concern and will have a positive impact - both on the future condition of Maine's forests and on those forest landowners seeking to manage their lands in accordance with the principles of long-term forest management. The proposed rule is likely to affect the economic interests of those who practice liquidation harvesting as a business model.

The department believes that its process has been fair, open, deliberate, and rigorous. It has received numerous comments – both prior to and during rulemaking - from a wide range of competing, often polarized perspectives, and it has attempted to strike an appropriate balance in developing the rule.

Public Process Involved in Developing this rule

Following enactment of the public law directing the rulemaking, MFS identified a stakeholder group (SG) of 14 individuals representing a wide range of interests, including landowners, loggers, foresters, conservation groups, and staff from MFS, and DEP. DIFW elected not to participate on the stakeholder group, but did review documents produced during the process. The SG members were¹:

Chip Bessey, ED Bessey
Bruce Bornstein, Isaacson Lumber
Sam Brown, Forester, Forest Stewards Guild
Rob Bryan, Maine Audubon Society
Steve Chandler, Small Woodland Owners Association of Maine
Doug Denico, Plum Creek
Harry Dwyer, Consulting Forester, Logger
Pat Flood, International Paper
Alec Giffen, Director, Maine Forest Service
Steve Holt, Member, Board of Licensure for Foresters
Andy Irish, Professional Logging Contractors of Maine
Cathy Johnson, Natural Resources Council of Maine
Ken Lamond, Forester, McPherson Timberlands
Mike Mullen, DEP

OBSERVERS

Eugene Dumont, DIFW
Rep. Kenneth Fletcher
John Gray, Chadbourne Timberlands
Ted Johnston, Resource Policy Group (for Wagner Woodlands)

Polly Haight Frawley provided legal services to MFS and the SG.

Several MFS staff provided technical, policy, and logistical assistance to the SG, including: Donald Mansius (Director of Forest Policy and Management), James Blanck (Chief Planner), Morten Moesswilde (Landowner Outreach Forester), Kenneth Laustsen (Biometrician), Judy Tyler (Clerk), Greg Lord (Programmer Analyst), Greg Miller (GIS specialist), Team Leaders Dick Morse and Roger Ryder, and Regional Enforcement Coordinators Jim McMullen (retired), Tim Post, and Tom Whitworth. District Foresters Dennis Brennan, Patty Cormier, Geneva Duncan-Frost, Jim Ecker, Dan Jacobs, Paul Larrivee, Jr., Bob Leso, Gordon Moore, Merle Ring, and Dave Rochester supported the effort through the field study.

The SG met several times between August, 2003 and January, 2004 and assisted MFS in assessing the relevant scientific and technical knowledge of the issues; formulating and evaluating policy options; and, evaluating draft rules. Although MFS and the SG worked to develop a rule that achieved consensus among the SG members, a number of key issues divided the group, and MFS developed the rule based on its best assessment of the issues.

¹ Affiliations listed for informational purposes only.

MFS released the draft rule for public comment in late February 2004 and held hearings during the last full week of March 2004 (see Appendix 4).

During the public comment period, MFS received over 400 written comments, most submitted by email. Over 350 emails contained similar or identical comments that stated support for the rule as an important first step and suggested three modifications to strengthen the rule. A handful of written comments opposed the rule for various reasons. Over 50 people testified at the three public hearings. Most of those testifying were either representatives of large landowners, wood processing facilities, or logging contractors. These people expressed mild to very strong opposition to the rule for a variety of reasons, which are addressed in this document. A few people testified in favor of the rule.

Economic impact of the rule

5 MRSA, § 8057-A, sub-§ 1.D requires agencies to conduct “[a]n analysis of the rule, including a description of how the agency considers whether the rule would impose an economic burden on small business as described in § 8052, sub-§ 5-A. That section requires the agency to “seek to reduce any economic burdens through flexible or simplified reporting requirements and may seek to reduce burdens through flexible or simplified timetables that take into account the resources available to the affected small businesses. The agency may consider clarification, consolidation, or simplification of compliance or reporting requirements. For the purposes of this subsection, “small business” means businesses that have 20 or fewer employees and gross annual sales not exceeding \$2,500,000.” The law does not require a full cost-benefit analysis.

Overview

The liquidation harvesting rule addresses a specific activity that takes place under defined circumstances, and hence affects only a small portion of the acreage harvested in Maine each year. The rule exempts a significant number of landowners, land managers, and harvested acres completely (because they are involved in programs that prevent liquidation harvesting or involve acreages that are insignificant from a statutory perspective). MFS believes that this rule will generate both benefits and costs of undetermined magnitude and distribution; however, both the agency’s analysis and that of an independent contractor (see Appendix 2) find that the overall net economic effects of the proposed rule will be minimal.

In general, the limited population of landowners and land managers who routinely engage in liquidation harvesting likely will incur costs to modify their timber harvesting operations and land purchase and sale strategies to comply with the rule and will suffer reduced returns. However, in some circumstances these same landowners and land managers may realize benefits in the longer term through alternative harvesting practices that result in additional wood volume and value growth, or increased property resale value.

Wood processing facilities (e.g. pulp mills and sawmills) that rely for at least a portion of their wood supply on periodic pulses of wood from liquidation harvests (e.g. to supplement their normal sources of wood supply and mitigate weather-related

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slowdowns in wood flow) may have a more difficult time getting relatively inexpensive wood under these circumstances. Affected mills could mitigate these impacts by adjusting their purchasing policies to anticipate potential shortages, increasing the amount of wood sourced from non-liquidation harvests, and changing the behavior of those suppliers who routinely engage in liquidation harvesting. MFS believes these impacts will be insignificant.

The larger population of responsible landowners and land managers likely will benefit from the rule, as their operations and the wood products they produce will compete in a marketplace that is more equitable for sustainable forest management and its inherent costs. Thus, the rule will create a more even economic playing field for responsible forest landowners. The public at large also will benefit from improved forest practices.

In the long term, both the quantity and quality of wood produced should be enhanced as a result of substantially eliminating liquidation harvesting.

Individual landowners may incur added benefits and/or costs, which will vary according to the current condition of their forested estates, their past and current level of forest management effort, their short-term and long-term objectives, and other factors.

Because the rule's application is tightly focused on a small segment of the landowning and timber harvesting community, and because large numbers of landowners and acres subject to timber harvesting are exempted from the rule altogether (because they do not participate in liquidation harvesting or the acreages affected are insignificant), MFS expects that a significant number of landowners and acres harvested simply will not be subject to the proposed rule. Thus, the vast majority of landowners and land managers will not incur any compliance costs.

Public benefits from the protection of public resources are difficult to quantify, but inasmuch as the proposed rule addresses the purposes embodied in existing statute, the department expects that these benefits will be protected and perpetuated.

The forest industry as a whole may benefit from the proposed rule, as the substantial elimination of a practice that the Legislature has deemed unacceptable for multiple reasons is likely to reduce the public opprobrium of timber harvesting and hence the pressure for additional regulation of all forest landowners and managers.

The regulated community subject to the proposed rule, which consists of a relatively small number of landowners and land managers, may bear additional costs in a number of forms:

- 1 - training and education (including self-learning, staff and contractor training);
- 2 - administration and operational compliance (including mapping, pre-harvest planning and consultation, harvest layout, harvest supervision, and post-harvest certification);
- 3 - possibly reduced timber values from harvested areas due to limitations on removals and increased logging costs associated with such removal limitations;
- 4 - possibly reduced land values under some circumstances and in some parts of the state; and
- 5 - increased holding costs for lands that would otherwise be sold within 5 years.

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Some portion of the non-regulated community may also face the relatively minor costs of becoming sufficiently familiar with the rule to assure their own compliance. In most cases, the department believes this will not require modification of harvesting practices.

The department also will incur additional costs for monitoring and enforcement of the rules.

The department has not conducted a detailed analysis to quantify these benefits and costs for various types of landowners, nor would a credible study to this end be possible without considerable additional resources. For example, a study of compliance costs for broad new timber harvesting guidelines in Minnesota² concluded that much of the data for a realistic analysis of regulatory costs was simply not available. However, the following considerations inform the department's understanding of these benefits and costs.

Land value impacts

Some parties assert that a rule limiting liquidation harvesting will reduce the price paid to sellers of land that could be liquidated. Those engaged in the practice of liquidation harvesting may offer a lower purchase price to sellers of forest land, reflecting their inability to liquidate completely a parcel and/or their need to hold a parcel for a longer period, as well as their regulatory compliance costs. At the same time, land which is purchased, harvested, and resold may be offered at higher prices, reflecting the lesser amount of timber removed in order to comply with the rule. These impacts have both benefits and costs, depending on who is affected, but likely will influence the value of a very small portion of Maine's forest land, because much of this land is in locations where no market exists for heavily cutover land except for continued forest management and the demand for such land may be easily saturated even where a market does exist. The studies to date indicate that liquidation harvesting affects only a small portion of the land harvested each year; therefore, it is difficult to see how it could effect timber land prices broadly. Long term landowners seeking to cash out of their forest land holdings completely may not receive the full liquidation value of their property unless they are willing to have the land harvested before they sell it. On the other hand, in areas where there is a market for cutover land, eliminating liquidation harvesting - and the high prices it allows liquidators to pay for property - will allow parties interested in long-term forest management to compete to buy forest land that otherwise would have been liquidated. Some parties also assert that reduced sale prices for forest land may affect the asset values of all forest landowners. The department disagrees with this assertion for the same reasons stated above.

Conversely, land values in areas under high development pressure may increase slightly if compliance with the rule encourages timber harvesters to leave more trees on a parcel. Numerous research studies have documented that consumers are willing to

² Vasievich, J.M.; C. Edgar. 1998. Economic Implications of Proposed Forest Management Guidelines for Minnesota. Minnesota Forest Resources Council, MFRC Report #SE-0998. 78 pp.

pay more for a house lot on which clearing operations have protected and retained existing native vegetation, primarily trees.³

Timber value impacts

Several commenters asserted that landowners would incur costs in terms of foregone timber value in the short term. MFS agrees that, in some circumstances, timber removal rates will be constrained by the proposed rule, primarily by requiring greater retention of trees in situations where a landowner or land manager chooses not to prepare a timber harvest plan compliant with the rule or where no silvicultural justification exists for a heavy harvest. A recently-published study from Minnesota indicated that requiring adherence to a broad set of timber harvesting guidelines could result in an average 10% decline in stumpage prices.⁴ It should be noted, however, that this study referred to a wide-ranging set of guidelines, far broader than envisioned by this rule. The department also believes that the THP process will provide opportunities for some landowners to adapt their harvest operations to support greater harvest volumes while protecting the public trust resources and public values of forests identified by the legislature. The department further believes that most volume reductions can be addressed by long-term harvest scheduling, such that the timber value from a particular harvest may often be deferred to a later harvest, but not ultimately forgone. Finally, the department observes that concerns regarding the increased risks of windthrow, ice damage, disease, product degradation, and damage from other agents to retained trees on some sites may be justified, but it maintains that such risks can be minimized through appropriate timber harvest planning which can allow the removal of all trees in circumstances where the risks are substantial or, in other cases, the retention of enough healthy trees to maintain a healthy residual stand. The rule has a variance procedure to address extreme cases that create a hardship for landowners.

Timber Harvest Planning Costs

MFS commissioned two District Foresters to write sample timber harvest plans to assess the amount of time and other resources would be required to develop a timber harvest plan that complied with the proposed rule.

The District Foresters were directed to approach the planning as if they intended to harvest most or all of the commercial value of the parcels. They were given wide latitude to choose appropriate parcels, provided they involved real world situations. Landowner permission was sought and obtained in both cases. They used a near final version of the harvest planning requirements in the proposed rule. The THP's are for

³ Examples include Anderson, L., and H. Cordell. 1988. Influence of Trees on Residential Property Values in Athens, Georgia (U.S.A.): A Survey based on Actual Sales Prices. *Landscape and Urban Planning*, 15:153-164; Thompson, R. et al. 1999. Valuation of Tree Aesthetics on Small Urban-Interface Properties. *Journal of Arboriculture* 25(5) (September 1999): 225-234; J. Dombrow et al, The Market Value of Mature Trees in Single-Family Housing Markets, *The Appraisal Journal*, Vol. 6(1), January 2000, 39-43.

⁴ Kilgore, M., and C. Blinn. 2003. The Financial Cost to Forest Landowners who Implement Forest Management Guidelines: An Empirical Assessment. *Journal of Forestry* 101 (8): 37-41.

real parcels somewhere in Maine. Landowner contact information and location was changed to protect the landowner's privacy.

Based on the District Foresters' work, MFS estimates that preparing a THP for a parcel of less than 500 acres will require 1-1/2 to 2 days, or about \$5.00/acre, depending on the time of year, availability of tax maps and/or photos, forester competency, and other factors. Some of the time involved is time that would (or should) ordinarily be spent in preparing a harvest, so the estimated days should not be considered as completely additive in terms of costs to the regulated community. MFS expects that foresters involved in liquidation harvesting will quickly realize economies by creating timber harvest planning templates to fill out. Planning for larger parcels likely will take longer than 1-1/2 to 2 days; however, many of the same steps are involved in harvest planning for any size parcel, so the increase in time required likely will not be proportional – it should be less on a per acre basis.

When considered in the full context of the costs of purchasing, heavily harvesting, and quickly reselling a forested parcel, and considering that many parcels that are liquidated sell for over \$500/acre, an expense of \$5.00/acre to prepare a harvest plan is minor and unlikely to affect the profitability of any party involved in liquidation harvesting.

Other costs to landowners and land managers

The costs associated with training and education will be greatest, proportionately, for those landowners who harvest least frequently, particularly those who operate without the assistance of a Licensed Forester or a logger familiar with land use laws. MFS intends to exert every effort to offer workshops, written and visual materials, one-on-one assistance, and other assistance to reach the widest possible audience prior to the rules going into effect. MFS's mission has an education focus and numerous staff have expertise in this type of information transfer. Educating foresters and timber harvesters to apply the rule consistently on the multiple harvests they conduct will further magnify this effort.

Landowners and land managers subject to the rule likely will incur some additional administrative, operational layout, harvest supervision, and harvest certification costs.⁵ The department believes that these costs will be reasonable and will be incurred primarily by those who currently do not have harvest planning policies and processes in place now. Most forest landowners and many land managers will be exempt from the rule and will not incur any additional costs.

Impact on prices of wood delivered to mills

The three principal components of mill delivered prices are: stumpage prices (the standing value of trees, paid or imputed to the landowner), harvesting costs, and transportation costs. According to the analysis of this issue conducted by Industrial Economics, Incorporated, wood prices are unlikely to be affected to any significant degree and are likely to be indistinguishable when considered in the context of the other factors affecting wood prices.

⁵ Alternatively, landowners may simply choose to wait five years before selling their property, thereby eliminating the need to comply with the rule altogether.

The overall costs of harvesting trees may increase slightly as the small percentage of landowners and land managers involved in liquidation harvesting distribute lighter harvests over a broader land area. Many of the landowners and land managers involved in liquidation harvesting possess the technology and expertise to do this; however, an increase in harvesting costs could be offset by improved timber harvest planning that allows more wood to be removed. Administrative costs (including road construction and maintenance) to plan and distribute harvest activities over a larger acreage base may also increase marginally, but overall these impacts are not expected to be significant.

A number of wood processing facilities, including pulp mills and sawmills, reportedly rely to varying extents on wood supplied by large timber harvesting and trucking contractors that reportedly engage in liquidation harvesting. Some portion of this wood originates from lands not deemed strategic to the contractors' ownership goals; another portion originates from lands subjected to liquidation harvests by smaller operators and brokered through the large contractors. The mills relying on wood sourced from liquidation harvests currently can supplement their normal sources of wood supply when wood prices are rising, because the large contractors can deliver large quantities of wood in a short amount of time. A number of parties have asserted that any regulation of liquidation harvesting would increase mill-delivered wood prices, thereby placing at risk the economic viability of the mills, indeed the industry.

The department disagrees with this assessment. According to industry representatives and MFS's field studies, liquidation harvesting accounts for a very small proportion of the 550,000 acres and 6.5 million cords harvested in Maine each year. Further, past analyses of significant forest policy proposals⁶ have concluded that both the paper and solid wood industries can adjust to changes in wood supply and price through such adaptations as species substitution, higher utilization rates, and improved processing technologies. Nonetheless, it is unlikely that this rule could have any noticeable impact on mill-delivered prices, unless the extent of liquidation harvesting is far greater than currently estimated. Further, as regards potential impacts on the industry as a whole, wood prices are only one component of total manufacturing costs.

Department costs (fiscal impact)

MFS has lost several enforcement related positions over the last year due to budget reductions. The positions lost include a Regional Enforcement Coordinator (Forester II) in the Forest Policy & Management Division and ten Forest Ranger III positions in the Forest Protection Division. To enforce this rule, MFS will need to redirect staff priorities away from existing programs and initiatives to absorb the additional enforcement work within existing resources.

MFS estimates the costs of implementing the rule in four broad categories:

- Training (in house)

⁶ State Planning Office and Department of Conservation. 2000. Timber Harvest, Economic, and Fiscal Impacts of the November 2000 Citizens' Initiative, "An Act Regarding Forest Practices." Department of Conservation, Maine Forest Service: Augusta. 34 pp.

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- Outreach and education
- Harvest monitoring
- Investigations and enforcement

In-house training and outreach/education likely will be similar to similar past efforts involving new initiatives or rules. Such efforts will require staff time and possibly additional costs, totaling the equivalent of one staff position or \$50,000-\$100,000 for the first 1-2 years. While training and education may be absorbed into existing efforts, this can occur only if other, ongoing efforts are displaced.

Harvest monitoring, investigations, and enforcement actions constitute by far the greatest ongoing cost of implementing the rule. MFS estimates that the annual effort required to monitor harvests, including the effectiveness of exemptions, could amount to several full time equivalents. MFS further estimates that the full suite of investigation and enforcement action components will amount to a minimum of 1.5 full time equivalents for every 1,000 acres suspected of non-compliance with the rule. This estimate does not include the additional costs of enforcing compliance with the THP option. Such enforcement actions could prove exceptionally complex, and MFS has no prior experience on which to draw for estimating its costs.

As new resources are unlikely to be forthcoming in the current fiscal climate, MFS may need to simplify and reduce the intensity of its entire enforcement program (including the Forest Practices Act and the forthcoming Statewide Standards for Timber Harvesting in Shoreland Areas) to absorb the additional effort within existing resources.

Traditionally, MFS has taken a tiered approach to regulation of timber harvesting; starting with education and outreach as the highest priority, followed by active intervention to prevent problems and to fix minor problems. Enforcement action is taken as a last resort when other efforts have failed. MFS also takes a tiered approach to enforcement action, beginning with efforts to negotiate a settlement agreement. Settlement agreements typically include a monetary penalty and remedial measures to ensure future compliance. Penalties increase with the size of the violation and for repeat violations. If MFS fails to reach a settlement with the responsible party, litigation is an option. The enforcement process can be lengthy and costly in terms of staff time to document the existence of a violation and to negotiate a settlement. If MFS simply absorbs the additional costs of enforcing this rule, the agency may be required to shorten the enforcement process; for example, by triaging minor violations, eliminating intervention work, and simply negotiating for monetary penalties during the settlement phase. Issuance of summonses in lieu of negotiation may also be necessary. Non-enforcement of laws is not a viable option, as the lack of an effective MFS response to complaints or known violations damages its credibility in all areas. In addition to impacting the agency's enforcement program, enforcement of the rules will also divert attention from the agency's educational and landowner assistance efforts.

In summary, MFS recognizes that additional resources are unlikely to be forthcoming in the current fiscal environment and that it will need to redirect existing staff resources away from its current mission. Enforcement of this rule likely will have a detrimental effect on MFS's enforcement of other land use laws (e.g., FPA, water quality, fire safety)

and on its keystone efforts to improve the knowledge of small woodland owners and the management of their lands. MFS likely will need to limit or eliminate several elements of its education and outreach programs. However, as stated earlier, non-enforcement of this rule is not a viable option.

Statement of Economic Impact

This rule is intended to substantially eliminate the practice of liquidation harvesting. The economic impact of the rule is difficult to quantify, and while it may be significant for individual companies or persons who practice liquidation harvesting, it is not expected to be large from a broader perspective.

Individual landowners may incur added benefits or costs, depending on the current condition of their forested estates and their short and long term objectives. In the case of landowners with short-term perspectives, such landowners may need to modify their timber harvesting practices or their time horizons to realize roughly equivalent value while remaining in compliance with the rule.

The proposed rule is intended in certain circumstances to restrict the amount of timber harvesting that may take place on a forested parcel that is held for five years or less. However, landowners who choose to develop a timber harvest plan that complies with the rule may be able to harvest more timber from a parcel than might otherwise be possible, e.g. than would be possible under the relatively common practice of removing timber to just above the threshold for a clearcut under the Forest Practices Act. Landowners are not precluded from making reasonable economic use of their land, and both an economic hardship determination and a variance procedure are identified for those rare cases where the rule may create undue hardship.

Because liquidation harvests are only a small portion of the harvests that occur in Maine annually, these rules are not expected to impact wood prices to any significant degree.

From an overview perspective, MFS concludes that the overall net economic effect of the proposed rule will be minimal. Net short term effects will be minimally adverse (some people and firms will be adversely affected while others are positively affected). Long term effects are expected to be beneficial as both timber supply and quality should be improved on lands which would have been subject to liquidation. This is not to say that in the short term specific individuals and firms that have practiced liquidation harvesting in the past will not suffer reduced revenues to resolve this issue consistent with our legislative mandate.

Fiscal impact of the rule

5 MRSA, §8057-A, sub-§ 1.C requires agencies to provide “[a]n estimate of the fiscal impact of the rule.”

Statement of fiscal impact

State government: The Maine Forest Service either will require additional resources to enforce this rule, or it will enforce this rule using existing resources and redirect staff priorities away from existing programs and initiatives.

Municipal government: This rule will not have a fiscal impact on municipalities.

General Comments About The Rule

Introduction

As required by 5 MRSA § 8052, sub-§ 5, MFS has developed this written statement explaining the factual and policy basis for the rule. MFS addresses the specific comments and concerns expressed the proposed rule. MFS further states its rationale for adopting any changes from the proposed rule, not adopting suggested changes, or drawing findings and recommendations that differ from those expressed about the proposed rule. As permitted by law, MFS has synthesized the same or similar comments or concerns about a specific issue expressed by different persons or organizations into a single comment that accurately reflects the meaning and intent of those comments and concerns, and lists the names of the persons who commented and the organizations they represent.

Copies of written comments and the transcripts of the three public hearings are available from MFS, on request.

Finally, MFS received over 350 emails from parties expressing nearly identical comments; in the interest of time, it has not provided a list of those individuals. Otherwise, the names and interests of individuals submitting written comments or testimony are listed as accurately as possible.

MFS COMMENT: The following two comments, set up as a Point-Counterpoint, effectively define the liquidation harvesting debate. The comments from two long-time forest managers are presented at length, because they so eloquently represent the perspectives that lie at the heart of this issue.

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POINT: Liquidation harvesting puts long-term forest managers and investors at a competitive disadvantage (as stated by Earle "Chip" Bessey)

Proponents of liquidation harvesting argue that it is simply another one of many legitimate forest management systems and, given time, the forest will once again become a forest. However, once a forest parcel has been subjected to the liquidation process, a sequence of events is started that makes it highly unlikely that the land will return to long-term forest management. The buyer of a recently-liquidated forest parcel has acquired an asset which has no capacity to sustain itself economically for forty to sixty years or more but which, instead, represents annual costs in terms of property taxes and management oversight, as well as the inheritance taxes that will come due for each generation. While the purchaser may intend to hold the property until it eventually has marketable timber, it is more likely that two or three generations will have to own the property before that occurs. In the interim, those generations will have to endure the costs, risks and headaches associated with forest land ownership, while being denied one of the essential benefits of timberland ownership – a financial return. It will be difficult to interest them in long-term forest management because none is possible while the forest recovers. Unless the next generations are tenacious in carrying out their forebears' wishes, it is more likely that they will seek further liquidation via sale of the property in part or whole. Thus, the original liquidation is not a one-time event that

heals with time; it most often commences a process of liquidation that occurs over a long time and takes many forms.

Liquidation harvesting is an extremely effective business plan. Its success can be judged by the numbers of participants it has attracted. It is the dominant business plan for independent loggers and liquidation businesses because: its fast turn-around of capital reduces risk to the liquidator; it provides maximum value possible to the seller; and, it provides a large supply of raw material to wood-using mills, and does it quickly.

There is no alternative business plan for acquiring timberland, holding it, and managing it for long-term timber supply that can compete with liquidation harvesting. Therefore, if there is no competitive alternative method, liquidation harvesting is all we will get when land is sold. There is no economically viable alternative.

There are many arguments that this process is inevitable, and some apparently believe that it is even good. It definitely is inevitable unless there are alternatives available.

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COUNTERPOINT: Liquidation harvesting is and has been an integral and necessary part of forest ownership, both now and throughout history (as stated by John Gray, Chadbourne Tree Farms)

Most of our ownership was "liquidated" at least once during its history. Many parcels were cleared and farmed. Those farms eventually were abandoned. They grew back to timberland. During economic hard times, many parcels had all the timber value cut again, and for some parcels, even the ownership was abandoned. All this boils down to is that we and our predecessors look for opportunities. For us, those "liquidated" properties abutting or near our existing lands are opportunities. Our purchase strategy is to look for parcels that have potential to be managed into future high value long-term timberland. Long term in this business is not 7 to 10 or 20 years, but generations. Long term is not, however, forever.

The common ingredient that our forest has with other assets is money. The forestland owner needs to get a return on his investment that is commensurate with the risk involved. This risk maybe measured by different people in different ways, and therefore individual return requirements maybe different. The concept, however, does not change – forest landowners need to maximize their return on their investment.

Proposed regulations like these impede the efficient and economic conversion of timberland to other types of assets, including cash; thus, these other types of investments (stocks, bonds, shopping centers, etc.) gain an unfair advantage. This unfair advantage will make the justification of making and/or continuing timberland investments more difficult. Alone this effect will potentially have a greater negative impact on the forest resource, because it will drive long-term owners away from the market. The impact of this will be much greater and longer lasting than any impact the "liquidation" model can have.

"Liquidation" operators offer services to current forest landowners. These "initial owners" start the "liquidation" process. The "liquidation" operators are efficient at converting timberland to cash - keeping the market liquid. They set true market values, which help establish collateral values. They also make less expensive land available to those desiring it – including abutters - creating another round or rotation for forestland

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ownership. It is rare that a long term owner can afford to acquire fully or heavily stocked timberland that has a high land value component without a heavy cut and possibly a sale of a portion of the parcel to help reduce carrying costs. This rule impacts all owners, whether they know it or not.

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COMMENT: Liquidation harvesting is not defined properly. 5-year holding period not appropriate. Problem is harvesting without regard for forest productivity. (Gordon Mott)

RESPONSE: MFS agrees that any harvesting without regard for forest productivity is problematic; however, the Legislature has defined liquidation harvesting in specific terms. MFS felt obligated to develop the rule in conformance with the definition.

COMMENT: The rule requires nothing. It will not change behavior, just require more description. (Gordon Mott)

RESPONSE: MFS disagrees with this assertion. Liquidation harvesting takes place without any harvest planning or regard for the future forest. The rule establishes standards for timber harvesting on short-term ownerships that, regardless of the option chosen, will require some additional attention to leaving a productive forest after harvesting.

COMMENT: The towns of Acton, Alfred, Sanford, and Shapleigh all bear oozing wounds of recent 'strip-mining' disasters. Loopholes in the new regulations would only encourage further depredations. (Alfred Conservation Commission)

RESPONSE: The exemptions in the rule were included to target the rule on the behavior of greatest concern. MFS believes that the exemptions in the rule are appropriate, respond to legislative direction and/or affect insignificant acreages, and that the rule will have an effect on the situations cited by the commenter.

Public process used to develop the rule

COMMENT: I compliment MFS on the stakeholder group process used to develop the rule. It was a good experience - open, fair, and participative. Thank you for listening and responding to comments I made throughout that process. (International Paper, Huber Resources, Maine Audubon)

COMMENT: During its stakeholder group process, MFS considered all the viewpoints presented during the hearings. MFS charted a middle course to protect people. The rules are going to happen. The law requires it. (Andy Irish)

COMMENT: Thanks for all your hard work on the task of coming up with a rule to control liquidation harvesting. It is unfortunate that something so important to the health of the environment can still be treated as a political football, but that is the situation, and I appreciate the stress it puts on administrators, regardless of where their personal sympathies lie. You have to try to make everyone actually happy, and then you have to settle for no one actually hating you! You have to attempt to solve a problem, and settle for the problem not actually being exacerbated. (Cynthia Stancioff)

COMMENT: Thanks for all your efforts listening to and incorporating a wide range of views. You have created appropriate exemptions, and set regulatory thresholds in places that will truly help to substantially eliminate this practice. (Roger Milliken)

RESPONSE: MFS appreciates the support for its process.

COMMENT: Process not involving state as a whole. Need a hearing in northern Maine. (Edwin Aylward, Peter Phinney, Maine Landowners Alliance)

RESPONSE: Hearing locations were selected based in part on MFS assessment of where most liquidation harvesting was occurring and having the negative impacts identified in the purpose statement of the enabling statute. Public hearings are not the only method for the public to provide comment; people are able to submit written comments by email, letter, and fax, and by phone if necessary. The perspectives of those affected by the rule were adequately represented at the public hearings.

COMMENT: Allow municipalities option to accept rule. (Peter Phinney)

RESPONSE: The Legislature directed that the department adopt the rule, and that the rule have statewide effect and enforcement by MFS. Allowing a local option could lead to a patchwork of overlapping and possibly conflicting forest practices regulations.

Liquidation Harvesting is/is not a Problem

Liquidation harvesting is either a very minor problem or not a problem; therefore, there is no need for this rule. The rule is flawed and will not stop liquidation harvesting.

MFS COMMENT: The majority of people who spoke at the public hearings expressed these concerns.

COMMENT: Liquidation harvesting is not a problem. (Plum Creek, Jim Robbins, Karen Thorndike, Fred Hardy, Steve McLaughlin, Louisiana-Pacific, Ronald Hawkins, Maine Landowners Alliance, John Cahoon, Jack Wadsworth, Fred Huntress, Wagner Woodlands, Cliff Foster, LandVest, Mead Westvaco, MFPC, Dale Henderson, Howard Charles, Rep. Thomas Saviello, Frederick Denico, Erik Charles, Robert Libby, Shawn Tewksbury, Herbert C. Haynes, Jr.)

COMMENT: Mixing two issues – forestry and real estate. This rule is aimed at stopping land sales, not forestry. Real problem is land conversion or development. (Edwin Aylward, Dick Trott, Cliff Foster, LandVest, Dale Henderson, Robert Libby, Shawn Tewksbury)

COMMENT: Repeal the law requiring this rule. Withdraw the rule. I hope that MFS will reconsider this rule. (Jeff Meserve, Wendell Scribner, Maine Landowners Alliance, Frederick Morton, Herbert C. Haynes, Jr.)

COMMENT: Maine's forests are in good shape. Let's focus on the positive message, not this negative message. (LandVest, MFPC, Maine Landowners Alliance, John Gray, Robert Libby)

COMMENT: The data provided at the end of our SG deliberations indicated that the scope of liquidation harvesting is less definite and probably much smaller than earlier

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anecdotal estimates indicated. Since the scope of the problem is narrow, and since the definition of the problem is at best, vague, it is important that the state “not fix a paper cut with a tourniquet” here. That could result in unwarranted regulation and uncertainty across a wide range of well-intended landowners. We believe that market-based solutions and collaborative education and outreach are the superior ways to achieve real change in this subject area. We continue to foster change in those approaches and offer our support and assistance. (International Paper, Huber Resources, Cliff Foster)

COMMENT: This rule is a bad idea. It is driven by emotion and aesthetics, not science. We should not be making rules for a 2% problem. (Karen Thorndike, John Stowell, Duane Allen, Jack Wadsworth, Susan Aygarn, Prentiss & Carlisle, Maine Landowners Alliance, Dale Henderson)

COMMENT: Most of the liquidated land stays in trees. Look at what happens to liquidated land long-term. (Maine Farm Bureau, Jim Robbins, Ronald Hawkins, Cliff Foster, Karen Thorndike)

RESPONSE: The Legislature directed the department to develop a rule to substantially eliminate liquidation harvesting. MFS must deliver a rule that responds to the legislative directive; doing nothing is not an option. While liquidated forest land can return to forest (although it often is converted to other uses in some parts of the state), future landowners and the state as a whole are denied the many opportunities and benefits of well-managed forests tended carefully to produce a steady flow of quality wood products and non-timber values over time. Further, MFS disagrees with the assertion that liquidation harvesting is not a problem. While there is debate over the amount of liquidation harvesting that occurs in Maine, there is no question that it happens often enough to generate public disdain for forest management and fosters a less supportive atmosphere for the forest industry. These trends are a problem in a state so reliant on its forests for so much of its economic activity. The Legislature has directed, and the department intends to restrict the practice so that responsible forest managers can benefit from a more supportive public policy climate.

COMMENT: The MFS field study found no widespread violations of the Forest Practices Act. (McPherson Timberlands, Herbert C. Haynes, Jr.)

RESPONSE: The MFS field study did not find any FPA violations. Compliance with FPA does not mean that a timber harvest was conducted with attention to long-term forest management principles; it simply means that harvesting avoided creating a clearcut, or, if a clearcut was created, that it had an adequate separation zone (and a harvest plan, if large enough). Across the state, MFS staff closely examine (e.g., forester inspection, preliminary cruise, full cruise) over 200 harvests representing over 45,000 acres annually. In many cases, the land involved was purchased, harvested heavily, and either resold or offered for sale within a short time. Further, many compliance cruises reveal that the land has been harvested to the bare minimum of compliance with the FPA rule with no regard for the future of the forest. MFS staff consider such lands poorly managed, with skid trails poorly laid out, excessive rutting, excessive residual stand damage, and other indicators of a very short-term, financially-driven harvest. Just the land examined closely for FPA compliance amounts to 8% of the land harvested in Maine each year. Despite studies done by MFS, resolving the

issue of “how much” liquidation harvesting is occurring over different time periods is a matter that can be debated for a variety of reasons, but the extent of the issue is clearly significant.

The FPA is working well. Change the FPA if there is a problem.

MFS COMMENT: Many people who spoke at the public hearings expressed these concerns.

COMMENT: The state already has sufficient timber harvesting regulations. Enforce them. (Ronald Hawkins, Jack Wadsworth, Dick Trott, Teresa Davis, LandVest, Howard Charles, Robert Libby, Shawn Tewksbury)

RESPONSE: The department was directed by the Legislature’s Agriculture, Conservation and Forestry Committee not to reopen the FPA rule, and the department committed not to do so. Reopening the FPA for amendments is neither desirable nor necessary to fulfill the legislative directive to substantially eliminate liquidation harvesting. The liquidation harvesting rule does add another layer of regulation on top of FPA; however, it applies only to timber harvesting that is not exempt and only if the land is resold within 5 years of the original purchase, so the potentially affected regulated community is far smaller than would be the case if FPA were reopened.

Liquidation harvesting is a problem; the rule is needed.

COMMENT: I have included several photographs of large parcels that have been liquidated in Carthage, Dixfield, T6, Weld, Washington TWP, and Wilton. This is just a small sampling of liquidation harvesting activity in a small region of Maine. (Conrad Heeschen)

COMMENT: The Maine Forest Service’s own studies have shown that liquidation harvesting (cut and run logging) is a serious and widespread problem. In twenty years, the practice would consume forested area equal to Baxter State Park. Not only does this harmful practice lead to increased sprawl and loss of wildlife habitat, it threatens the long-term viability of Maine’s forest industry. (several hundred email comments, NRCM, NWF, Elizabeth Stanley, Conrad Heeschen, Pamela Prodan, Neil Butler)

COMMENT: I question the accuracy of the data showing liquidation harvesting accounts for only 2% of the harvested acres each year. The number is a lot higher when you consider high-grading that leaves a high basal area of inferior trees. For once, I like the name of the bill, “An Act to Improve Stewardship of Forest Resources.” Let’s quit abusing our forests and manage for the future. Well managed land grows more wood than poorly managed land. (David Clement)

COMMENT: We understand the bigger picture beyond the 2.2% focused on by opponents of the rule. There are other implications in the study on residual stand damage etc. We will be studying this with attention to the larger pool of problems. (MLC)

COMMENT: The problem we have is foresters, loggers, and speculators view their way of doing business as a procedure of making a quick buck. This mindset causes our forests to become more fragmented than ever, thus eliminating the need for good forestry and sustainability of our natural resources for the future. (Rodney Wales)

COMMENT: Since Maine's forests are a major economic and recreational resource, I support the proposed rule that will place restrictions on liquidation harvesting. Harvesting rules should incorporate procedures for the benefit of all our citizens and not be rewarding economically the few who happen to be strategically placed. (JPehk@aol.com)

COMMENT: The practice of strip mining and fragmenting the Maine forest, threatens all the state's inhabitants. By all, I mean fins to furs, as well as we humans. Habitat loss is as big a threat as the loss of potential raw materials for our wood related industries. Please do what you can to stop liquidation harvesting and bring about sensible forestry to Maine. (Craig Denis)

COMMENT: If liquidation harvesting were not qualitatively different from traditional overcutting, many Maine citizens would not be spending so much of their time and effort on land conservation. The liquidators are breaking up parcels into unmanageable lots; they do not care about the long-term health of the forest. (Conrad Heesch)

COMMENT: Liquidation is a problem in Amherst. Thousands of acres in town cut heavily and subdivided (38%). Town loses from a revenue perspective, because it only gets taxes on land valued at Tree Growth rates. (Neil Butler)

COMMENT: The town of Carthage is flanked by two paper mills, one in Rumford and the other in Jay, and a pine sawmill in Dixfield. One might suppose that the woodlands would be highly valued and maintained as working forests to provide long term fodder for these mills, but that is not the case. When Timberlands went bankrupt, their land was sold off to a development firm. The land is being clear cut, divided up, and sold off by liquidators. If this practice isn't stopped, there'll be no more forest industry in Maine because there will be no more forest. I just watched a two hundred acre deer wintering area with the finest cover I've ever seen being clear cut. No doubt, it will be chopped up and sold as camp lots. If we don't protect Maine's forests soon, now, today, we won't have anything left to protect, and we'll become "Northern Massachusetts," a designation we once held. (Penny Gray)

COMMENT: As a sporting camp owner, I see the unfortunate affect of liquidation harvesting in its harshest forms. Loss of viable timber land, recreational access to lakes and forests to hunt and fish and the construction of seasonal and year-round homes in regions that have been completely undeveloped are some of the impacts of liquidation harvesting. The viability of the sporting camp industry is at risk from development of camp lots throughout the north woods. (Jeff McEvoy)

COMMENT: I am totally against liquidation harvesting; it should be made illegal. Near LaGrange, there are just a few contractors/landowners doing it, but it has been done on a large scale. Liquidation harvesting downgrades other property owners' property values, removes ground from timber production for at least one generation, and often generates a burden to the town or municipality. These contractors often will owner finance the property to low income people who put in an "old trailer" or other marginal dwelling and within a year or two, they are gone with all the junk left behind. The only people benefiting from this situation are the liquidation contractors, first by cutting all marketable timber, then from owner financing a multitude of times. It is a shame that

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nothing was done about it 10 or 12 years ago. I am a Certified Master Logger, Certified Logging Professional, and a Tree Farmer. If we do not take care of our land and forest, we will all regret it. The future of Maine's forest and industry lies with what decisions we make today. If rules are not made and enforced, greed will make our forests just a memory. (Gene Goodine)

COMMENT: There are loopholes that must be fixed so that there will be precise standards that apply to all situations. Far too many are able to manipulate rules for a short-term gain as happens in the tragic cut and run approach. This abuse of a renewable resource must be stopped because as bad as the initial liquidation is, the collateral effects lead to permanent despoliation of our forestland. The lack of strong rules threatens the forest industry itself. We must curb liquidation harvesting! (Bob Kimber, Pamela Prodan, David Doubleday, David Clement)

COMMENT: I support a rule that would either eliminate liquidation harvesting, or substantially reduce the degree of liquidation harvesting currently taking place. I recently witnessed the land adjacent to mine heavily harvested, leaving what can best be described as a destruction of anything resembling a pristine setting. In the next several months, [more nearby] land is scheduled for liquidation harvest. We'll again have a forest that looks like a moonscape. While it's too late to save these parcels, others will follow suit. With the sale of land to companies whose sole purpose is to profit and get out, it's time for authorities to intervene for the sake of the land and the people. We cannot permit this practice to continue as today's trend is tomorrow's tragedy. With corporate America's health being judged solely by its bottom line, with private companies' quest to make and take as much as possible, the time to re-introduce ethics is at hand. Yes, today they own the land. However, history proves tomorrow they won't. (Lee Bertsch)

COMMENT: My husband and I own a woodlot of about 60 acres and have it selectively cut as required. We feel that this method respects the land, fosters wildlife habitat, maintains optimum growth and financial return and is the right thing to do. We would like to see this method applied to commercial lands as far as practical. Especially important is the 75-100 feet along public roadways. The essence of Maine is in its natural beauty. Residents and visitors alike should not be subject to the sight of endless miles of raw, clawed land left to a miserable fate. We've seen such sights on our travels through the northern part of Maine. It's not pretty. It looks disrespectful, irresponsible and wasteful. Let's see what's happened in the past, look for more than a quick buck in the present and consider the future. Eco-tourism is a growing industry. It should be able to coexist with the paper industry. (Denise Larson)

COMMENT: I served on the Garland Planning Board for many years. During that time, I observed many acres of land change from forest to denuded barrens. I asked a licensed forester to walk one of these former forests with me to educate me about the forest practices used and advise me about proceeding with a legal complaint. Much to my surprise, I learned that the harvest was legal. The land was later subdivided. I learned from this and other experiences how important the wording and enforcement of the harvesting laws is, and how right now those laws don't seem to be in tune with what's best for the forests, wildlife and the people of the state of Maine. (Peter Devine)

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COMMENT: Sporting camps are dependent on the undeveloped, forested environment in which they are located. If this is altered in any way, the attraction for guests is greatly diminished. A liquidation harvest in proximity to a sporting camp would eliminate the forested environment so many visitors enjoy. The quality of fishing, hunting, wildlife viewing, and scenic value of the area would be destroyed. Worse, still, would be any resultant development which would eliminate the peaceful, undeveloped environment guests seek when visiting a sporting camp. Even without development, this harvesting practice could well be a death knell to many Sporting Camps. If the state does not take adequate action on this practice, liquidation harvesting will ultimately be the death knell for Maine's famed reputation as Vacationland - The Way Life Should Be. We urge you to make use of such strong disincentives as capital gains tax penalties and fines, and as stewards of a sustainable forest and timber industry, to move aggressively against this destructive practice, before it greatly reduces our forests. (Maine Sporting Camps Association)

COMMENT: Liquidation harvesting is an eyesore. It disturbs or destroys valuable habitat. The erosion has a major negative impact on our watersheds. We are strongly opposed to the destructive practice of liquidation harvesting. (Jeffrey McMullen-Nixon, Robert Nixon)

COMMENT: I am interested in stopping or at least slowing down the clearcutting of Maine's forests. (Herb Poole)

COMMENT: Not all can see the long term impact of liquidation harvesting. It is imperative for our future that the land base stay intact to provide job and recreation opportunities for generations to come. (John Gibson)

COMMENT: Weld is a community particularly hard hit by liquidation harvesting. Large tracts of forest land that have provided timber, and places for people to hunt, fish, and hike for generations have now been liquidated, destroying both their timber producing potential and their recreational opportunities. People in town feel quite sad to drive by these liquidated lots and see the damage. (Jerry Nering)

COMMENT: My pleasant rural neighborhood was turned into an instant slum by a man with no ethics and no conscience. I am familiar with a number of similar instances within a 25-mile radius of my home in Canaan. (Clinton Townsend)

COMMENT: I experienced liquidation first hand recently, when C.B. Cummings' 7,000 acres holdings fell into a liquidator's hands. This included a parcel abutting us encompassing shoreland along a critical reach of the Crooked River (Class AA and designated as an Outstanding River). Because of boundary and access complications, fortunately we were able to buy this parcel (at a price!), but watched liquidators slashing and trampling the growing stock on nearby parcels, including oak that had potential to grow to veneer quality. All this despite the fact that parcel remained in Tree Growth under a grace period. (Bart Hague)

COMMENT: I am a logger and a woodlot owner. I feel that liquidation harvesting is a serious problem. The short term gain from liquidation harvesting is at the expense of a long term supply of quality wood. (Robert Donovan)

COMMENT: Orland has suffered from cut-and-run logging severely in the past 9 years. More than 14% of the town has now been cut and is up for sale by a single liquidation harvester. This land, including more than two miles of lake frontage, is being marketed for subdivisions and commercial development. If all 4,500 acres were to be subdivided and sold, the cost to the town could not be imagined by most of its residents right now. The land has been open to the public for recreation for years, and harbors incredible wildlife habitat - all that could be lost tomorrow. A large new subdivision full of high-end homes could also be devastating to property taxpayers here. Thankfully, local folks are banding together to try to purchase this property and protect it. Many other lovely waterfront and waterview properties have not been so lucky. This liquidation harvester has cut, subdivided, and sold hundreds - if not thousands - of acres in Hancock County. A 30-acre, 5-lot subdivision he's created on Hatchery Road in Orland was heavily cut and poorly planned and resulted in lots with no water, some of which are now being resold by their original owners. The bright side was that this single development drove the Town of Orland to rewrite their subdivision ordinance. (Cheri Domina)

COMMENT: Many private foresters oppose liquidation harvesting. After I delivered testimony at the Legislature calling for ending liquidation harvesting, a longtime acquaintance who buys and sells wood and land, said to me: "Thank you for saying what I have been thinking for 20 years". More recently, I was chatting informally with an industry middle manager who volunteered that he was very frustrated by the fact that his company continues to buy wood from the liquidators. I strongly believe that these people are not alone. But all of them are inhibited from speaking the truth by their circumstances. Those who are making dire predictions about the consequences of limiting liquidation harvesting do not speak for all of their peers and employees. If we have an industry openly declaring that it is dependent on management practices that amount to uncontrolled wasteful subdividing and abusive and exploitive forest practices, then we are in a lot worse trouble than I ever imagined. I have to hope that we are not in such a position. (Lloyd Irland)

COMMENT: Liquidation harvesting is real -- every assessment of liquidation harvesting has come to that conclusion. Liquidation harvesting is practiced by a few dozen operators. Liquidation harvesting occurs on enough forest land so that in the long run it could turn a big chunk of our forests into overcut (and in some cases divided) stands that will be more difficult to manage. Liquidation harvesting occurs not because there are bad people, but because there's money to be made in the short term, because our regulations don't guide people towards investing for the long term. Finally, liquidation harvesting works against a basic value that all of us in Maine share: productive, well-managed forests that provide livelihood, recreation, and wildlife habitat. (Drew Barton)

COMMENT: The issue of liquidation harvesting has been a thorny one for a long time. Many who supported the poorly crafted 1996 "Ban Clearcutting" referendum question had an image of these harvests in mind. Those who supported the Compact started the process that led to this rule. We believe the time has come to implement measures that make the practice of sustainable forestry more widespread. The Guild strongly advocates efforts to control and contain [the] destructive practice of liquidation harvesting. (Forest Stewards Guild)

RESPONSE: The department agrees that liquidation harvesting is a problem. All of the personal experiences recited above validate the legitimate public policy concerns that underlie the development of the rule. The department appreciates the support it received for the proposed rule.

The Proposed Rule is too restrictive

MFS COMMENT: The majority of people who spoke at the public hearings expressed these concerns.

COMMENT: The rule will be burdensome and expensive. Just increases economic pressures on landowners. (Dave Warren, Chuck Ames, Karen Thorndike, Ronald Hawkins, Dale Henderson, Rep. Thomas Saviello, Karen Thorndike, Herbert C. Haynes, Jr.)

COMMENT: The rule is not tightly focused. (Duane Allen)

COMMENT: Rule will cause confusion – sets up two standards (FPA and this rule). (Wagner Woodlands, Dave Warren)

COMMENT: In a presentation to the Maine Forest Products Council, Alec Giffen handed out a diagram showing incentives on the left side and disincentives on the right side. In the center was a green triangle showing the impact on harvests by this rule. At the bottom tip of the triangle there is a small area labeled “HARVEST SUBJECT TO RULES”. The remainder of the triangle is labeled “ALL HARVESTED LAND.” I suggest that you take the whole triangle and turn it upright so the small triangle is on the top and expand the bottom section by 20x plus. Then label the bottom section “LAND IMPACTED BY LIQUIDATION HARVESTING RULES.” In reality all timberland will be impacted in some manner by this rule, whether by loss of income, loss of value, or just plain loss of confidence in the ability to make a living from that timberland. (Chadbourne Tree Farms)

Nothing in the rule or the rulemaking process addressed the impact this rule will have on the supply of wood from Maine land or the value of forestland offered for sale. These important considerations cannot be ignored. (Herbert C. Haynes, Jr.)

COMMENT: Be extremely cautious that the rules do not end up adding cost to innocent landowners. (Duane Nadeau)

RESPONSE: The economic issues are addressed earlier in this document. The department believes that the rule is tightly focused on the behavior of greatest concern. The establishment of a separate standard for timber harvesting on short-term holdings is intentional and consistent with the legislative directive.

The Proposed Rule is not Restrictive Enough

COMMENT: While the Maine Forest Service proposed rules will help slow cut and run logging, they still fall short of what is needed if we are to safeguard the long-term interests of Maine's forest economy, wildlife, and fisheries. (Forest Stewards Guild, NRCM, NWF, Pamela Prodan, Neil Butler, several hundred email comments)

COMMENT: Given the sad history of referendums in the forest management area, Governor Baldacci seemed to have done the impossible in getting the Legislature to

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pass a law allowing the state to write effective rules to stop liquidation harvesting. Please don't write another chapter in the shameful history of the state's poor management of its forests by failing to take this opportunity to write effective rules. Make them fair, but make them effective. (Roger Lee)

COMMENT: I think you have come up with a very reasonable approach to a very complex situation. I wish the five year window were longer. (Mac Hunter)

COMMENT: Close the cut, buy, sell and buy, sell, and cut loopholes. (NRCM, NWF, Maine Audubon, David Clement)

RESPONSE: The legislation specifically defines liquidation harvesting as involving the purchase of land, harvest of timber, and resale of the harvested land. The loopholes identified by some commenters (e.g., cut, buy, sell, and buy, sell, cut) exist; however, addressing them is beyond the scope of this rulemaking and the legislative directive.

The rule is an unconstitutional taking of private property

MFS COMMENT: Many people who spoke at the public hearings expressed these concerns.

COMMENT: The rule takes individual rights away from landowners (John Cahoon, Wagner Woodlands, Ronald Hawkins, Jack Wadsworth, Jeff Meserve, Wendell Scribner, Maine Landowners Alliance, Dale Henderson, Erik Charles, Robert Libby, Shawn Tewksbury, Herbert C. Haynes, Jr.)

RESPONSE⁷:

Regulatory takings

A regulatory taking occurs when the court finds that a regulation:

- causes what amounts to a physical invasion of private land (the “physical invasion test”);
- deprives the landowner of the economic use and/or value of her property (the “economic test”); or,
- fails to substantially advance a legitimate government interest (the “due process test”).

There are many qualifications, limitations, and permutations of each of these three tests.

In 1908, the Maine Legislature asked the Maine Supreme Court whether the state could regulate the cutting or destruction of trees on private land for a variety of environmental purposes, including erosion control, without paying compensation. Focusing on the goal of the legislation to prevent use of private property that would be injurious to citizens generally, the court affirmed the authority of the state to adopt the law, quoting the following language from earlier decisions of the U.S. Supreme Court: “We think it a settled principle, growing out of the nature of well-ordered civil society, that every holder

⁷ Adapted from Pidot, J. 1995. Outline: Takings Law Constraints on Governmental Regulation of Natural Resources. Mimeo.

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of property, however absolute and unqualified may be his title, holds it under the implied liability that use of it may be so regulated that it shall not be injurious...to the rights of the community.”

The Washington State Supreme Court responded similarly to a takings challenge to the state’s 1945 forest practices law, as follows: “Edmund Burke once said that a great unwritten compact exists between the dead, the living, and the unborn. We leave to the unborn a colossal financial debt, perhaps inescapable, but incurred, nonetheless, in our time and for our benefit. Such an unwritten compact requires that we leave the unborn something more than debts and depleted natural resources. Surely, where natural resources can be utilized and at the same time perpetuated for future generations, what has been called “constitutional morality” requires that we do so.”

Applying the three tests to the proposed rule

The physical invasion test: The proposed regulations will not result in a physical invasion of private land.

The economic test: The proposed regulations do not deprive landowners of the economic use and/or value of their property. The proposed regulations do restrict the amount of timber that may be harvested from a parcel within a certain period of time (5 years) if the parcel is resold within 5 years of original purpose. However, the landowner is not precluded from making reasonable economic use of his or her land. MFS studies have shown that even a 50% basal area removal limitation allows a landowner to capture a substantial portion of the standing timber value (often more than 50%). Further, the rule contains both an economic hardship exemption and a variance procedure for those rare cases where the rule may create undue hardship.

The due process test: The proposed rule is designed to achieve legitimate public purposes, including the protection of public trust resources that occur on or near private property. The purpose statement of the law serving as foundation for these regulations, specifically, 12 MRSA, chapter 805, sub-chapter 3-A, § 8866, provides ample support for the legitimate public purposes served by this rule. A recital of the purpose statement follows:

“The Legislature finds and declares that the State's forests are resources of great significance to the people of the State. These resources have great economic value, environmental value, scenic beauty and unique characteristics and unsurpassed recreational, cultural and historical values of present and future benefit to the citizens of the State. The well-being of communities of the State depends upon sustainable forest management. Liquidation harvesting is a serious and direct threat to forest management, forest industries and rural communities over the landscape of Maine. Liquidation harvesting produces significant adverse economic and environmental effects and threatens the health, safety and general welfare of the citizens of the State. Liquidation harvesting is incompatible with responsible forest stewardship and must be substantially eliminated.”

Conclusions

Based upon analysis of the three tests, an extensive reading of the legal literature, long-standing purpose statements in existing land use laws, and the decision history of the

Maine Supreme Judicial Court, U.S. Supreme Court, and other courts, it is the position of the Department of Conservation that this rule does not create a constitutional taking requiring compensation.

Economic Impacts of the Rule

The rule will penalize the sellers of land with mature timber on it and/or will devalue forest land

MFS COMMENT: Many people who spoke at the public hearings expressed these concerns.

COMMENT: If a buyer can't cut sufficient timber to justify the investment, the buyer will pay less for the land and timber. The rule will only inhibit the ability of landowners to market their timber at fair market value. (Fred Huntress, Chadbourne Tree Farms)

COMMENT: Concerned about the negative effects on land values. (Duane Allen, Fred Hardy, Edwin Aylward, Ronald Hawkins, Plum Creek, Cliff Foster, LandVest, Rep. Thomas Saviello, Chadbourne Tree Farms, Karen Thorndike, Shawn Tewksbury, Herbert C. Haynes, Jr.)

COMMENT: Concerned about being able to realize long-term investments in timberland. (Howard Charles, Chadbourne Tree Farms, Shawn Tewksbury)

RESPONSE: Landowners with mature timber who wish to sell the timber have a number of options that will allow them to capture all of the marketable value of the timber. Some of those options lie outside the scope of this rule; others would be subject to the rule. For example, long-time landowners may sell their stumpage prior to selling their land and recoup all of the value of their timber (excepting timber that must be left to comply with the FPA and other land use regulations). Further, while the buyers of both the land and the timber from a long-time landowner will build the costs of harvest planning and/or a longer holding period into their purchase offer, MFS believes these costs will not be significant, and a smart seller will still be able to obtain nearly the full value of their land and timber assets. As the opponents of the rule point out, liquidation harvesting affects a very small portion of the land harvested each year. The rule is not expected to affect most harvests.

The rule will make forest land unaffordable for or will discourage people who want to invest in long-term forest management or consolidation of forest land

MFS COMMENT: Many people who spoke at the public hearings expressed these concerns.

COMMENT: Not many young people can afford to buy mature timber. Expect to be outbid on forest land. (Karen Thorndike, Fred Huntress)

COMMENT: Liquidated lands can make a good purchase opportunity for people interested in long-term management. Smart investors turned off by rules. Cheap land is needed. (Maine Farm Bureau, Jim Robbins, Susan Aygarn, Peter Phinney, LandVest, Chadbourne Tree Farms)

COMMENT: Sold cutover forest land to land trust at affordable price; land is now protected. (Daryl Flagg)

COMMENT: Investment in timberland is a risky proposition, because one never knows what the Legislature will do. (Cliff Foster, Landvest)

COMMENT: Very high real interest rates drive liquidation harvesting. Stumpage prices very stable for 20 years - Treasury bonds gave a much higher return with less risk; therefore, people liquidate their woodlands. Money has been growing faster than trees at high interest rates. The rule creates another disincentive to long-term forest management. Maine has been hostile to forest management since 1985 – this has discouraged investment. (John Stowell)

COMMENT: Reinstate favorable capital gains treatment of timber from pre-1986 U.S. tax code. (Walter Gooley)

COMMENT: Liquidated land can be a good deal, and can be consolidated as well as fragmented (Dick Trott, Landvest, Chadbourne Tree Farms)

COMMENT: It is a myth that cutover land is more affordable. Liquidated land often sells for more than the original purchase price with trees. (Conrad Heeschen)

RESPONSE: MFS agrees that federal and state tax and fiscal policies do not do as much as they could to encourage long-term forest ownership. The recommendations in the Complementary Solutions report address some of these concerns. Liquidated forest land can be obtained relatively cheaply – although it is often true that liquidated forest land can also sell high in areas with hot real estate development markets. If kept in forest management, the “buy low” strategy allows landowners to minimize their initial investment costs. However, a liquidated forest does not yield much to future landowners for a very long time, and can actually serve as a disincentive to future management. On the other hand, sound forest stewardship provides a constant flow of high-value products and maintains important forest values. Liquidation harvesting also puts persons interested in long term forest management at a competitive disadvantage when selling their wood (liquidators can sell for less and provide large volume) and when buying forest land (liquidators can pay more).

While some landowners have done a very good job of managing liquidated lands that they have obtained cheaply, this has come at a significant cost to both the landowner and the public, when state and federal cost-share funds are involved. For example, in one instance, an exemplary landowner who purchased liquidated forest land has received nearly \$80/acre in cost-share payments since 1999 to rehabilitate and improve the land. The landowner has invested a significant, undetermined amount of money as well. While MFS recognizes that the new owners of liquidated lands should not be punished for what the prior owner did to the land, MFS is troubled by the use of cost-share monies to mitigate the poor condition of liquidated forest lands. In effect, the forest liquidator has captured all of the financial value of a tract and externalized the costs of rehabilitating the future forest to the subsequent landowner, society, and, in a number of cases, the taxpayers.

The rule will encourage high-grading and heavier cutting

MFS COMMENT: Many people who spoke at the public hearings expressed these concerns.

COMMENT: Rules will lead to high-grading. If only 40% can be harvested, landowners will cut the most valuable wood. (Jim Robbins, Susan Aygarn, Wagner Woodlands, Jack Wadsworth, Cliff Foster, MFPC, Rep. Thomas Saviello, Frederick Denico, Erik Charles, Robert Libby)

COMMENT: Buyers of land may be tempted to cut down to the FPA minimum standard and hold the land for 5 years before selling. Many liquidation harvesters now leave a substantial volume of standing timber to make the land more saleable. (Fred Huntress, LandVest)

RESPONSE: The MFS 2003 field study, numerous FPA compliance cruises, and earlier studies all indicate that liquidation harvesters are harvesting stands to just above the FPA minimum now, and that many of these harvests leave poor quality trees to form the residual stand. They cannot harvest much more volume without running afoul of the FPA rule. MFS has modified the rule to allow the removal of 50% of the basal area, providing that high-grading is avoided.

The rule perpetuates the perception of a bad business climate in Maine

MFS COMMENT: Many people who spoke at the public hearings expressed these concerns.

COMMENT: Rule will have adverse impact on business/loggers. Will drive loggers out of business, as they need to sell land in hard times. Will increase wood costs. Additional rules harm cash flow and employment. Increasing jobs and cash flow is good for the state's economy. (Daryl Flagg, Jim Robbins, Karen Thorndike, Jenness Robbins, Chuck Ames, Steve McLaughlin, Edwin Aylward, Ronald Hawkins, Geneva Duncan-Frost, Galen York, Jack Wadsworth, Maine Landowners Alliance, Lloyd Poulin, SAPPI, John Cahoon, Chris Bickford, Wendell Scribner, Erik Charles, Dale Henderson, Howard Charles, Robert Libby, Herbert C. Haynes, Jr.)

COMMENT: We are planning to build a new sawmill. If we lose our loggers and wood supply (due to this rule), we can forget about the new mill. (Jim Robbins)

COMMENT: This rule will have a profound impact as to how timberlands are managed, sold, and harvested in Maine. We also can count on unforeseen consequences; some may be beneficial, others however will not be. We are changing the rules of the game in this very liquid and active marketplace, which by all accounts appears to be healthy. With the uncertainty that will exist around this rule, the immediate impact will be caution by both those in the market and those providing capital for that market. This caution will be reflected by a reduction in the amount of capital invested. Lenders will be more cautious, which may well reduce available capital to this already undercapitalized industry. This rule will have a chilling impact on the timberland market and overall harvesting activities in Maine. The overall impact of the rules will impact far more than those "liquidation harvesters," and with an industry that is already struggling, this could be another nail in the coffin of Maine's largest industry. (Frederick Morton)

RESPONSE: The economic issues are discussed earlier in this document. While there are concerns about the state of the logging workforce, the logging workforce is declining for reasons far beyond the scope of this rule (e.g., technology changes and low pay). MFS believes the rule will strengthen the competitive position of the vast majority of

professional loggers who conduct exemplary operations and engage in responsible business practices, and of landowners who manage their forests for the long term.

COMMENT: The law requires MFS to reduce any economic burden on small business through flexible reporting procedure. In my opinion, there is no flexibility in this reporting procedure. (Merle Parise)

RESPONSE: The rule offers a great deal of flexibility in both the exemptions and in the harvest options. The rule does not impose any new reporting requirements on small businesses.

COMMENT: The rule will drive up the price of house lots and home construction costs, increase crowding, and push development on to farm land. (Robert Libby)

RESPONSE: MFS disagrees with this assertion. The unwise, unplanned development that has overtaken much of southern Maine - often following liquidation harvesting - is not in the best interests of the state's forest industry, property taxpayers, municipalities, and citizens. This rule will encourage wiser development patterns and support the state's Smart Growth initiative.

Liquidation harvesting puts responsible forest landowners and land managers at a competitive disadvantage and harms the state's forest-based economy

COMMENT: In the past 10 years, it has become increasingly difficult for us to make our harvesting operations pay. The reason is forest liquidators. They are ruining the forest and the forest product market. Several hundred of our acres were in the hands of a liquidator before we bought it. This land will not produce a dollar of product for more than 50 years and even then, the product will be low value. Then, through their high-volume/low-care process, they flood the market driving prices down for people like us. This has less effect on them because they have high volume contracts and, to add insult to injury, they receive a higher price for their product. The result is that the price paid to the landowner for stumpage is too low to allow us to manage the forest sustainably. (David Moscovitz and Bambi Jones)

COMMENT: Some have argued that in a free market system, how someone harvests and sells their land should be their business alone. But this is a caricature of our economy. The United States has a vibrant free market system, but one that works because of laws, regulations, and rules. Excessive rules can unnecessarily constrain an economic sector, but too few rules can have even more dire consequences. This is well illustrated by recent scandals in the financial industry. For forestry, it seems be not so much a question of whether to have rules, but which rules will make this economic sector stronger and healthier. The rule overall will have a positive effect by reducing liquidation harvesting and improving the management of forests in Maine. (Drew Barton)

COMMENT: Repeated statements were made that reducing supply by ending liquidation harvesting would push Maine's industry over the brink at an especially bad time in the markets. This statement presumes some clear understanding of the effect on volume cut and costs due to these regulations. Given my overall understanding of the situation, I cannot see that there would be any material effect, as most owners are not now practicing liquidation harvesting. All the same, it would not be a bad thing if

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Conservation could analyze this issue in depth in the future. I would not defer action to await this, however. I have seen several detailed presentations on the competitive picture for Maine's paper industry by outside observers. Not once did they argue that continued liquidation harvesting is essential to the industry's future. Instead, these people pointed to our well known problems of tax climate, old mills, and labor issues. It does not appear to me that liquidation harvesting has prevented the loss of 5,000 jobs in paper mills, or had any material effect on prospects for the several mills that have endured capacity shrinkages or even bankruptcy proceedings. Dozens of small wood using plants have vanished despite the altruistic and self-sacrificing efforts on their behalf by the liquidators whose labors on behalf of the public well-being are so familiar to all of us. In fact, I believe that an outlook for continued liquidation cutting continues to compromise the prospects for future supply – which is what a new investor will consider in deciding whether to invest in mills here. Here we have an extraordinary contradiction. The same people who protest the “locking up” of forests for nontimber purposes tell us that the slow grinding up of the resource – and future supply -- by the liquidators is essential to the forest economy's survival. They want to have it both ways. Will more regulation blacken the policy environment? This concern is often raised. I am as concerned as anyone about the state's policy environment for capital intensive industry. I believe our real concerns for the regulatory environment lie elsewhere. Adopting the rule will not materially damage the regulatory environment for manufacturing. All it does is slightly tip the playing field in a direction more favorable to landowners and operators who think about the future in terms longer than a few months. You have probably heard the claim that in Vermont, excessive regulation has driven out industry ownership and investment. I am confident that this statement is false. If Vermont is uniquely plagued by regulation, why has industry been selling lands and closing capacity in New Hampshire, which has little regulation? Why is the same true in Pennsylvania, which also has little regulation? (Lloyd Irland)

RESPONSE: MFS agrees that liquidation harvesting can have the types of impacts described, and that the rule is likely to improve the elements of the forest products sector involved in responsible forest management, wood procurement, and processing.

Enforcement by DOC

Regulatory philosophy: MFS takes a pragmatic, incremental approach to enforcement based on education, intervention, remediation, and, as a last resort, enforcement action. The first step is education of the regulated community. If this rule is adopted, MFS will place high priority on training staff and the regulated community before undertaking enforcement. The second step is active monitoring of timber harvesting activities and intervention to prevent problems from occurring. Should education and intervention not work, the next step is remediation if possible. MFS staff foresters and rangers will work with the landowner or contractor to try to fix any problems and prevent problems from getting any worse. Should all these efforts fail, or the problem is so severe, or the landowner or contractor is uncooperative, then, and only then, does MFS take enforcement action.

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MFS enforces the law fairly and equitably across the spectrum of landowners. MFS enforcement records reveal that large landowners and operators are subject to enforcement efforts equal to those of small landowners and operators.

COMMENT: Penalties must be significant enough to deter potential violators. Penalties cannot be just a cost of doing business. (several hundred email comments, NRCM, NWF, Forest Stewards Guild, Bob Kimber, Drew Barton, Pamela Prodan, Conrad Heeschen, Roger Lee, David Doubleday, Maine Sporting Camps Association, Maine Audubon, Neil Butler, Penny Gray, Herb Poole, Bart Hague)

COMMENT: Fining violators sounds like a deterrent, but small fines to big companies and just written off as another cost of doing business. A better solution is to revoke or restrict a company's license or permit allowing them to do business in Maine for a certain period. Now that would hurt! Get serious and they'll take it seriously. (Robert Murch)

RESPONSE: As it has with FPA, MFS intends to develop a penalty schedule that ensures that violations will not be considered just a cost of doing business.

COMMENT: The rule creates more and more costly enforcement responsibilities for the Maine Forest Service. It is very time consuming to reconstruct stands after harvest. MFS will go after the little guys and let the big guys go about their business. (Fred Huntress)

COMMENT: MFS will not be able to enforce this rule – too complex and expensive. (Jim Robbins, Dave Warren, Fred Huntress, LandVest, Mead Westvaco, Robert Libby)

COMMENT: LandVest will be requesting compliance affidavits from MFS for land sales it is brokering. (LandVest)

COMMENT: To insure effective implementation, I urge beefing up staffing and funding for the Forest Service. This will be a prudent investment in Maine's future. (Bart Hague)

RESPONSE: MFS addresses this concern earlier in the document. It is unlikely that MFS will receive additional resources to enforce the rule. As it does now with its other regulatory responsibilities, MFS intends to enforce the rule equitably across the spectrum of responsible parties. MFS is not in the business of providing compliance affidavits. That is a private sector responsibility.

COMMENT: If buying timber rights only, does this exempt a liquidator from following these standards?

RESPONSE: If the land and timber are sold separately by Landowner A to Landowner B and Timber Owner C, then, under the definition of "landowner,"⁸ both Landowner B and Timber Owner C would be responsible for compliance with the rule. However, if

⁸ Landowner means a person, company, or other entity which holds title to land, including joint ownership or tenants in common. Where the ownership of the timber located on a parcel is different than the fee ownership of the land, the owners of the timber are deemed to be a landowner and are jointly and severally responsible with the fee landowner to comply with this rule. Where a corporate landowner is a wholly owned subsidiary of another corporation, both parent and subsidiary are deemed to be the same landowner. (MFS Chapter 20 Rule, Forest Regeneration and Clearcutting Standards)

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landowner A sells timber rights to Timber Owner D, and landowner A has owned the land for at least 5 years, neither Landowner A nor Timber Owner D need comply with the rule.

The rule is needed; please adopt the rule

COMMENT: NWF commends MFS for the draft rule. This rule will help protect wildlife habitat while encouraging sound forest management today and for the future. We encourage you to make adjustments and interpretations as suggested and adopt the rule. (NWF)

COMMENT: I hoped that the complementary solutions stakeholder group would craft incentives to make long-term forest management more competitive against liquidation harvesting, but that did not happen. Thus, I believe it is in the interest of Maine's forests that the rules be enacted. (E.D. Bessey)

COMMENT: I urge you to stay resolute in your commitment to end this practice and hope you will make sure that the proposed rules get adopted. Please don't let the liquidators persuade you to back down. (David Moscovitz and Bambi Jones, John Gibson, Clinton Townsend)

COMMENT: I encourage you to continue in your commitment to end liquidation harvesting. Western Maine is increasingly showing signs of this devastating practice. (Deborah Burd)

COMMENT: The rule is reasonable, workable, and has validity. The rule is advantageous for the future of the forest industry. Passing the rule is crucial to the long-term health of both our forest products and recreation industries. (Rodney Wales, Jerry Nering, Richard Barringer, Daniel Amory)

COMMENT: The proposed rule sends us in the right direction. Rules a good first step. (Drew Barton, Deborah Burd, Richard Barringer)

COMMENT: Rules will not apply to most forest practices. Support them. Incentives will not stop liquidation harvesting. (Jake Maier)

COMMENT: I support the rule. (Everett Towle)

COMMENT: The rule should go a long way toward achieving the goal of eliminating liquidation harvesting. The rule will benefit forest-based recreation, contributing to the diversification and revitalization of distressed northern Maine communities. Tourists and recreationists are not attracted by liquidated timber stands. Stand firm against strong pressure from economic interests that benefit from short-sighted forest liquidation, at the expense of the long term health of both the forest and the industry. (David Vail)

COMMENT: We support the rule as an acknowledgment of the seriousness of the problem. The rule should be strengthened, however, to address the issue adequately (NRCM, Sierra Club, Robert Donovan, several hundred email comments)

COMMENT: MLC companies 100% support the current regulations and complementary solutions to liquidation harvesting. (MLC)

COMMENT: I strongly support the rule. MFS worked tirelessly over the last six months to get its arms around this difficult issue and come up with a rule that will be fair and effective. I believe you have achieved this goal. Many people are criticizing the proposed thresholds as overkill, but I urge you to stick with your draft rule. You have already bent over backwards to create a long list of exempted parties. This reduces dramatically those who would be affected by the rules. The fact is that the task the Legislature set before you requires changing a business model. Liquidation harvesting seeks to extract the most value in the shortest amount of time at the lowest cost—the future, and the forest, be damned. It favors the present at the expense of the past. Changing this behavior requires strong medicine, particularly because the market rewards, and indeed encourages, such short-sighted behavior. You have set the bar high enough to address the practice, and presented a simple solution to the hurdle you have erected—write (and follow) a comprehensive harvest plan. For the optimal result from this rule, the Forester Licensing Board will have to take a strong role in disciplining foresters who bless inappropriate harvests. I encourage you to consider how the Forest Service may work closely with that Board to encourage the forestry profession to adhere to high standards of sustainability. I hope that the Maine Implementation Committee of the Sustainable Forestry Initiative might be encouraged to use their 800 telephone number to further support the board. When liquidation harvests are brought to their attention through the 800 number, I hope they will inform the Forest Service and the Board so that they, in turn, can assess the adequacy of the harvest plan. (Roger Milliken)

COMMENT: This rule includes 10 exemptions and two options, plus a variance procedure, for those who legitimately need or want to harvest more than 40% of the basal area on a parcel. The list of exemptions is extensive, and goes a long way towards focusing the impact of the rule on those who engage in the targeted practice. We see the proposed rule as a step in the right direction. While not perfect, it is the result of a lot of consideration and effort by reasonable people on all sides of the matter. Even if the proposed rule does not completely halt liquidation harvesting, at least some liquidators will have cause to stop and think. We believe that thoughtful foresters, loggers, and landowners should have no problem with this rule. (Forest Stewards Guild)

RESPONSE: The department appreciates the support for the proposed rule. It will work to ensure that the rule is authorized, enforced, and monitored for effectiveness.

The rule is not needed; more education is needed

MFS COMMENT: Many people who spoke at the public hearings expressed these concerns.

COMMENT: MFS should focus on education and training to change behavior and solve the problem. (Jim Robbins, Plum Creek, Huber Resources, McPherson Timberlands, MFPC, Howard Charles, Rep. Thomas Saviello, Nexfor/Fraser Papers)

RESPONSE: Education and training, particularly directed at loggers and land managers, are core elements of the MFS mission. MFS plans to continue work with the regulated community to improve forest management practices and obviate the need for

additional performance standards. MFS has added a new compliance option for accrediting loggers and foresters who successfully complete an approved training course. MFS believes this option substantially addresses the comments.

COMMENT: I am not in favor of the rule in its current form. It will reduce the value of all forestlands, impact many more harvest operations than need to be addressed, cost the regulated community and the Maine Forest Service more resources than it should to address this issue. In my view, supported by all of the relevant data, this is a far greater political issue than a forest health issue. (McPherson Timberlands)

RESPONSE: These issues are addressed throughout this document.

Other general comments

COMMENT: Rule will harm biodiversity by promoting uniform management across landscape. (Cliff Foster)

RESPONSE: The rule does not require that a single harvesting prescription apply across the landscape. Landowners and land managers will be free to tailor their management to the land within the parameters of the rule.

COMMENT: This rule requires a cost-benefit analysis, per Commissioner's letter, and a serious technical analysis. (MFPC, Plum Creek)

RESPONSE: The Administrative Procedures Act does not require a cost-benefit analysis. The Commissioner committed to do the following in his 22 May 2003 letter: "[w]ith the resources and expertise available to us, we will examine the costs and benefits of any proposal we advance from multiple perspectives." MFS was not allocated additional resources to conduct this rulemaking. Within its existing resources, MFS has evaluated the relative costs and benefits of the rule (see earlier in this document). In addition, a contractor with expertise in economics has submitted an analysis of the rule (See Appendix 2).

COMMENT: The rules need to be strict enough so that taking the land out of tree growth imposes staggering tax burdens on the seller, who should pay back taxes to the town as far back in the books as the land was first designated and taxed in tree growth. Clearcutting should be eliminated, and deer wintering areas should be protected even in settled townships. (Penny Gray)

COMMENT: Enforce adherence to intent of Tree Growth Law by requiring buyers to follow existing Forest Management Plan during grace period prior to securing a new Plan or paying penalty. Impose penalty if violate Plan during grace period. (Bart Hague)

COMMENT: A management plan addressing: (1) sustainable harvest rates; (2) harvesting leaving adequately stocked stands; (3) avoiding high grading; and, (4) minimizing residual damage to trees and soil, should be required for any landowner in the Tree Growth Tax program. Tree Growth should be used to prevent liquidation harvesting; it currently lacks the necessary measurable standards and public accountability procedures to insure the public benefit. (Sierra Club)

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RESPONSE: The Tree Growth Tax Law provides for substantial withdrawal penalties; however, changing the Tree Growth Tax Law is beyond the scope of this rulemaking. Clearcutting is a legitimate silvicultural tool that is regulated by the Forest Practices Act rule. Banning the practice is beyond the scope of this rulemaking. Regulating timber harvesting in deer wintering areas is beyond the scope of this rulemaking, except where such areas are considered significant wildlife habitat as defined by law.

COMMENT: I have not been able to follow closely the rule agenda. Please tell me when this rule was posted on your agency's agenda? (Merle Parise)

RESPONSE: The rule was advertised in the department's 2003-2004 rulemaking agenda, which is posted on the Secretary of State's website:

www.maine.gov/sos/cec/rcn/apa/agendas/agenda04/04.htm#058

COMMENT: Is 5 years long enough? Without strong action on the subdivision part of the package, I am not convinced that the silvicultural rules, important as they are, will be sufficient. (Conrad Heeschen)

RESPONSE: The department agrees that a comprehensive package of actions is needed to substantially eliminate liquidation harvesting. As of the writing of this basis statement, LD 1617, An Act to Improve Subdivision Standards, has passed both houses of the Legislature.

COMMENT: My solution to liquidation harvesting is dynamic and should be used as an individual case scenario solution. If an individual does not have a resource manager attest to the forest, soils, and wildlife conditions prior to and the silvicultural need for a clearcut harvest, and the state can show it was not a reasonable alternative and/or detrimental to the public welfare, the landowner shall pay a severance tax to be set by the governor annually. The tax is based on a scale from the following data bases: a) current timber values as described in values described in the state confidential reports; b) the timber depletion rate of the zone as set by the state five year timber inventory for the zone; c) the estimated taxable income derived from recreation in the county where the harvest took place; and, d) the annual increase in road construction costs for the county. This tax is intended to recoup the loss of the public benefit from the natural benefit of clean water, less air pollution, temperature modification, soil improvements, wildlife habitat, and public services that an integrated human and natural ecosystem provides the public. A DEP, IF&W, or a LURC violation would trigger the tax. (Merle Parise)

RESPONSE: This proposal is beyond the scope of this rulemaking. It may be considered in the context of complementary solutions to liquidation harvesting.

COMMENT: A major concern I have is that in any logging operation, there should be a requirement to maintain a full spectrum of age categories of the trees left. The health of a forest depends on all degrees of maturity. Mycorrhizal relationships are only beginning to be understood, but clearly affect the long-term health of the forest ecology, and sometimes depend on mature trees being present. Other elements of a healthy forest are insects, mammals, reptiles, lichens, birds, and other species whose roles are not well understood, but nevertheless intrinsic to health and dependent on mature trees. Mature trees will not grow back on the cutting rotations we see these days. A mature

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tree needs 75, 100, or more years to grow. It is not logical to ignore this fact in our forestry dogma, but somehow it slips past Orono and Augusta, every time! (Cynthia Stancioff)

RESPONSE: MFS agrees that all of these values are important; however, the Legislature directed the department to deal with liquidation harvesting, not every forest-related problem. Further, additional regulation is not always the best way to achieve their protection, and in some ways, may be counterproductive. See the response to the comment below for additional perspective.

COMMENT: As a landowner, we need some certainty as to the state's directions on forest regulations. We believe that any administration would be looked on favorably if non-regulatory approaches were first exhausted before applying new prescriptive rules that will result in unintended consequences and enforcement expenses. (Plum Creek)

RESPONSE: The department agrees that regulatory certainty is important and is still interested in developing the concept of outcome-based forest policy. It is still committed to developing a set of statewide forest sustainability benchmarks as well. However, liquidation harvesting required some regulatory attention to take it away as an issue in the public policy arena and create a more favorable climate for an initiative (outcome-based forest policy) that unfortunately could be seen by some interests as a weakening of environmental protections.

COMMENT: Build in an effective education program on the spirit and intent and provisions of the rule. Target foresters, loggers, landowners, and the public. (Bart Hague)

RESPONSE: MFS intends to conduct a vigorous, comprehensive outreach and education campaign about the rule.

COMMENT: MFS should evaluate the rule's effectiveness after 5 years. (Everett Towle)

RESPONSE: This is an excellent suggestion. MFS plans to continue regular harvest monitoring and to evaluate the effectiveness of this rule continuously as its resources permit.

Comments on Specific Sections of the Rule

Summary

No comments received on this section.

SECTION 1. PURPOSE

COMMENT: The rule needs to be focused on the small number of commercial harvest operations that need attention to visible, measurable harvest performance standards: damage to regeneration, residual stand, excessive skid trail area, rutting, poor water crossings, poor closeout, etc. (McPherson Timberlands)

RESPONSE: The department believes that the rule is focused on the behavior of greatest concern and that the purpose statement is appropriate as written.

SECTION 2. AMENDMENTS TO MAINE FOREST SERVICE CHAPTER 20 RULE (FOREST REGENERATION AND CLEARCUTTING STANDARDS)

No comments received on this section.

SECTION 3. SCOPE AND APPLICABILITY

COMMENT: Have rule apply only where it is a problem. (Chuck Ames, others)

RESPONSE: The rule implements a law that applies statewide and must apply statewide. To do otherwise violates the equal protection clause of the U.S. Constitution. While the perception of liquidation harvesting as a problem may differ by region, the effects do not. Even if liquidated forest land remains in forest management in some regions because the development market is limited, as noted earlier in this document, subsequent landowners, society, and taxpayers often foot the bill for rehabilitating damaged lands.

COMMENT: The language in this section is ambiguous and requires simplification; it should refer to the previous definition for liquidation harvesting. (MFPC)

COMMENT: "This rule establishes timber harvesting standards for forest lands in Maine which are purchased **or acquired** after the effective date of this rule, and harvested and sold or offered for sale **or otherwise conveyed** within five years of acquisition." Why have these been added? This seems to be adding to the definition of liquidation harvesting. Instead, change the Scope to: This rule establishes standards for commercial timber harvesting on timber land in Maine which are purchased after the effective date of this rule, and harvested and sold or offered for sale within five years of acquisition. The rules for commercial timber harvesting would apply to all timber land in Maine. The incentives and disincentives would apply only to timber land enrolled in Tree Growth, "forest lands." We would need to change the definition of forest land in the rule to the definition of forest land in the tree growth law and have a separate definition for timber land. (McPherson Timberlands)

COMMENT: "Unless an exemption applies, it is a violation of this rule and of the statute if a landowner conducts timber harvesting on a parcel without complying with this rule

and then sells, offers for sale, **or otherwise conveys the parcel, or any portion thereof**, within five years of its acquisition.” This expands the definition of LQH that is in the law and should be removed. The law refers to “and the subsequent sale or attempted resale of the HARVESTED LAND within 5 years.” (McPherson Timberlands)

RESPONSE: The department interprets the statutory charge to require that any harvesting on any portion of a parcel held for 5 years or less be subject to the rule, unless otherwise exempted.

COMMENT: New acquisitions should stand alone for 5 years, not be combined with existing ownerships. (MFPC)

RESPONSE: MFS interprets the law and the rule to apply only to lands held 5 years or less. Longer-term holdings are not subject to the rule, regardless of whether such holdings are combined with new acquisitions. The rule applies only to the new acquisitions that are harvested and held less than 5 years.

COMMENT: The rule assumes that all parcels are ‘forest land’ and ignores the reality that parcels of land in Maine are commonly made up of areas of field as well as forestland and many parcels include houses, barns and outbuildings. The rule should apply only to the forested portion of parcels and the sale of fields and other non forested portions of parcels of land, especially those portions with buildings, should not be a violation of the rule since those areas will not have been harvested in any manner at all. (Herbert C. Haynes, Jr.)

RESPONSE: Parcel size is determined with relative ease; determining the forested and non-forested portions can be very complex and time-consuming for all parties involved. MFS has retained its original interpretation.

SECTION 4. DEFINITIONS

COMMENT: Liquidation harvesting should be defined as removing most of the value of a stand with little regard for the future forest. The application of the rule only to parcels held 5 years or less is too limiting and addresses only one kind of liquidation. (Sierra Club)

COMMENT: Under "Liquidation Harvesting," the question is, are you constrained by the legislation in this definition? If not, consider changing "without regard for long-term forest management principles" to "in a manner likely to result in significant damage to the long-term prospects for ecological health of the forest stand, in terms of accepted forest management principles," or something to similarly cast the violation in less black/white language - to avoid, for instance, someone arguing that he/she really did have honorable intentions. (Cynthia Stancioff)

RESPONSE: The definition of liquidation harvesting derives from existing statute. The suggested change would be too substantive and is beyond the scope of the rulemaking.

COMMENT: Definition of liquidation harvesting: The term “sale or offer for sale” is unclear. It should be made clear that this involves transfers of title or agreements to transfer title for consideration. It should also be made clear what this definition does not

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include paper transfers. These transactions are a part of business for many landowners with long-term ownerships of forestland. (MPFC)

RESPONSE: Most of the exemptions proposed (in a separate email) are not covered by the rule to begin with. On the advice of counsel, MFS has not added paper transfers as an exemption. It will address this issue on a case by case basis.

COMMENT: The definition of "liquidation harvesting" should be worded exactly as defined in statute. (McPherson Timberlands)

RESPONSE: The changes were made to clarify the definition, and therefore the application of the rule, on the advice of counsel.

COMMENT: Under "Certified Master Logger," add to "standards promulgated by that program dated 01 April 2003" something like "and subsequent updates," to provide assurance that master loggers will maintain a state-of-the-art understanding of forest ecology science and recommended forestry practices, so that we don't end up stuck with what is a still-developing understanding at this point. (Cynthia Stancioff)

RESPONSE: As noted elsewhere, MFS is working with the Master Logger Certification program to ensure appropriate forester involvement at critical points in the harvest planning and implementation process.

COMMENT: Definition of forest land: This definition conflicts with pre-established definition of forest land as defined in Title 36, Chapter 105, section 573, part 3. The rule should apply only to forest land as defined and enrolled in Tree Growth Tax Law. (MFPC, McPherson Timberlands, Mead Westvaco)

RESPONSE: The definition of forest land in the Tree Growth Tax Law does not govern the definition in the statute directing this rulemaking. The definition of forest land as proposed in the rule was developed in consultation with the department's legal counsel.

COMMENT: Under "Forest Stand," why does it require trees to be "sufficiently uniform in age class" as part of its definition? A forest, optimally, has a wide range of age classes in it. To ignore this fact risks creating an exemption for the best type of forest, one which has not been "farmed" yet. (Cynthia Stancioff)

RESPONSE: The commenter is correct that a **forest**, broadly defined, has a wide range of age classes. The definition of **forest stand** is also silviculturally correct, and is in the rule to clarify the requirements for a stand-specific silvicultural rationale in the THP.

COMMENT: Under "Independent 3rd Party Certification," after "no financial" add something like "or other interest" to cover the possibility that the person is related, or involved in some circuitous but significant way in the larger business picture. (Cynthia Stancioff)

RESPONSE: The department believes the definition is sufficiently clear. As part of its ongoing harvest monitoring efforts, MFS will review the harvest performance on certified lands exempted by the rule to assess the effectiveness of the exemption.

COMMENT: Definition of parcel: This definition is too broad. Landowners who acquire land contiguous to current land holdings will now have rules applied to their entire

contiguous ownership. It is understood that this was not the intent of the rule, but revisions need to be created to avoid this conflict. (MFPC)

RESPONSE: The department does not interpret, nor will it apply, the rule to affect portions of current land holdings that are not subject to the rule. The rule will only apply to the portions of a consolidated parcel that have been held for 5 years or less, and only if not otherwise exempted.

COMMENT: Should the rule define "Licensed Forester" and incorporate updates in the forester's education, if this is not accomplished already in the licensing process? (Cynthia Stancioff)

RESPONSE: The definition of "Licensed Forester" is incorporated by reference from the FPA rule. A Licensed Forester is means a forester licensed under 32 MRSA c. 76. The rules for licensing include a continuing education requirement.

COMMENT: Definitions are subjective and ambiguous. (Maine Landowners Alliance)

RESPONSE: Most of the definitions applying to this rule are incorporated by reference from the FPA rule. Those definitions have been in place for 5-13 years and seem to be widely accepted. The new definitions are intended to assist the regulated community in complying with the rule. The commenter did not provide any specific suggestions as to which definitions "were subjective and ambiguous," nor did the commenter provide any specific suggestions to improve the definitions.

SECTION 5. EXEMPTIONS

General Comments

COMMENT: Only about ½ of all Maine forest land is exempt (not enough). (MFPC)

COMMENT: The exemptions are great concepts, but the average logger will not qualify for many of these. (Rep. Thomas Saviello)

RESPONSE: MFS believes that the exemptions exempt a significant majority of the landowners, forested acres, and harvested acres. The exemption for ownerships of 100 acres or less ensures that the rule does not apply to approximately ¾ of the state's forest landowners who own more than 20 acres of forest land. The exemptions for independent third party certification, parcels smaller than 20 acres, and ownerships of less than 100 acres account for more than half of Maine's forested acres. The exemptions for independent third party certification, certified resource managers, and certified master loggers exempt a significant, but undetermined quantity of the acres (and wood) harvested in Maine each year.

COMMENT: The exemptions would do nothing to prevent the butchery of the former, superbly managed Lavalley forest land in Alfred and surrounding towns. Long time owners who have demonstrated responsible forest management should be allowed the fruits of responsibly managing their forests. Special rules should apply to all new buyers, without exemptions for certification, harvest plans, and master loggers that provide loopholes for cut and run operators. Legitimate emergency hardships excepted, the rules should be uniform for all others. In rural residential areas, any single unit over 20 acres and multiple units over 100 acres should bear effective clear cutting

restrictions. Perhaps the units should be larger in the large tracts of the unorganized townships, but 500 acres will do nothing to preserve the disappearing forests in our rural residential areas. (Alfred Conservation Commission)

COMMENT: There are too many exemptions. Both G and I seem to favor special interests and leave loopholes. (Sierra Club, others)

RESPONSE: Several of the exemptions respond to the legislative direction. Other exemptions were added based on thoughtful discussion and consideration by the stakeholder group. MFS has adjusted some exemptions and added a few; however, it considers the premise behind each one to be strong. MFS will monitor the harvesting on both regulated and exempted lands and recommend adjustments as necessary.

COMMENT: The MFS field study information indicates that the average parcel size affected by liquidation harvesting is only 114 acres. Many of the problem areas may be exempted by the rule, in turn, making the rule relatively ineffective. (Nexfor/Fraser Papers)

RESPONSE: The average parcel size in the MFS field study of liquidation harvesting was 114 acres; however, the assertion that the rule would exempt many of the problem areas is incorrect. The rule proposes to exempt small acreage harvests (20 acres or less), as directed by the enabling legislation, and small ownerships (100 acres or less). MFS studies have repeatedly found that logging contractors and real estate brokers are the landowner classes of greatest concern. The rule focuses on these landowner classes.

Section 5.B. Independent 3rd-Party Certification

COMMENT: NWF strongly supports a strict interpretation of the current language defining "Independent 3rd Party Certification." It is critical to meeting the goals of this rule and the need for equitable treatment of landowners that any certification system meriting this exemption is as independent of inherent bias towards any landowner or class of landowners, as the state itself would be in implementing the rule outside of this exemption. For example, "certification" programs developed by landowner or industry association(s) in consultation with, and implemented on behalf of, their own members should not qualify for exemption under this definition. Allowing this would be unfair to landowners who have not had similar opportunities as dues-paying members of associations to influence and develop standards and protocols that may result in exemption from the rule. (NWF)

COMMENT: The certification exemption is not really an exemption. It would require landowners to incur additional costs for a compliance audit, whereas now only a conformance audit is required. The exemption should read as follows: "Where the harvesting is on land that has received independent 3rd-party certification. [period]" (Plum Creek, Wagner Woodlands, Huber Resources, Mead Westvaco, MFPC)

COMMENT: The exemption for land subject to third-party certification needs strengthening to avoid loopholes. Specifically, this exemption should not include parcels where harvesting occurred after the land was audited and before it was sold. The certification standards should be at least as rigorous as the standards for the management plan. Should require an audit of any land sold that was harvested under

the exemption. (Several hundred email comments, NRCM, NWF, Drew Barton, Pamela Prodan, Maine Audubon, Neil Butler, Bart Hague)

COMMENT: The state is not set up to keep track of what a landowner does. He could become certified by a third party organization, and thus be exempt, and then change course and liquidate the following year. (Roger Lee)

COMMENT: Allowing an unregulated outside interest to judge ecologically silvicultural operations is unfair, because there is no appeal process. Who will set the appeals process, and who regulates it? The rule does not address the procedure which should be followed. Also, it should be clearly established when the third party is to be hired, what are their credentials and who they work for. The rule does not outline their responsibilities. The rule does not address the liabilities and harm caused by the third parties oversights. (Merle Parise)

COMMENT: Forest certification should not exempt landowners from the rules. This will only encourage liquidators to start out by managing well so they can achieve certification followed by liquidation immediately thereafter. This will only serve to undermine certification credibility. Instead, insure that there are valid options for certified landowners to respond to known silvicultural emergencies, but require that their first step must be to surrender their certification and to notify the Maine Forest Service of such an action. Now MFS can determine if any penalties are applicable. (Duane Nadeau)

RESPONSE: The enabling legislation specifically directed that the rule include exemptions for landowners and land managers with independent third-party certification. MFS has modified the rule to read as follows: "Where the harvesting is on land that has received independent 3rd-party certification and where an auditor determines that any harvesting on any parcel sold within 5 years of purchase has conformed to the requirements of the certification system." MFS believes that the certification systems now in existence will not allow participants to game the state's regulatory framework by rapidly moving land in and out of the certified land pool and abusively harvesting the land while exempted from the rule's application. MFS is not in a position to exclude specific certification programs from the exemption. This decision would need to be made by the Legislature, based on evidence that a program does not support the intent of the rule.

Section 5.C. Certified Master Loggers

COMMENT: I have been working with the Master Logger Certification Program evaluating companies being certified. I was at first concerned about this exemption, as the program has concentrated on logging performance, not silvicultural goals. I was worried there could be an excellent logging operation that was actually high-grading and liquidating the timber growth. I now understand this program advocates that all operations have a Harvest Plan prepared by a professional forester. This and continuing 3rd party certification and review when complaints are filed make this a worthy exemption. (David Clement)

COMMENT: Reduce the acreage exemption for Certified Master Loggers. Loggers are not allowed by law to practice silviculture (unless licensed as foresters). Forester

involvement in harvest plans should be required on parcels larger than 100 acres.
(Maine Audubon)

COMMENT: How do you allow Master Loggers to liquidate without a plan? This exemption seems a bit off. (Erik Charles)

COMMENT: The exemption of Certified Master Loggers disappoints me. I am licensed by the state to practice silviculture. However well trained or thoughtful an individual is, they must be licensed to practice forestry. This exemption allows the individual to practice silviculture without the appropriate education or journeymanhip. This rule allows uncertified individuals to decide if an area should be clearcut. This is a silvicultural decision, and they must demonstrate that they are qualified to make the necessary decision. It is the occupation of the resource manager in conference with the land owner and logger to prescribe the ecological decisions. (Merle Parise)

RESPONSE: The enabling legislation specifically directed that the rule include exemptions for parties with independent third-party certification. Master Logger Certification is one such program. MFS is working with the Master Logger Certification program to ensure appropriate forester involvement at critical points in the harvest planning and implementation process. MFS expanded the exemption for Certified Master Loggers to 1,000 acres. As with other aspects of the rule, MFS will evaluate the effectiveness of this exemption and recommend appropriate changes as needed.

Section 5.E. Permitted land use conversions

COMMENT: The proposed exemption allows land that is converted to be exempt from the rule. The exemption fails to address the condition of the portion of the property that is retained. The exemption should include a requirement that retained portions of the property must be well-managed. If there is no such requirement, liquidators will simply get a prior subdivision permit for as much of the property as they believe they can sell for development, then proceed to liquidate the entire parcel, holding the undeveloped piece for 5 years. This would be a loophole big enough to allow liquidators to continue business as usual. We encourage you to close this loophole prior to adoption of the rule. (Natural Resources Council of Maine, Neil Butler, Pamela Prodan)

COMMENT: This exemption puts loggers at a competitive disadvantage with real estate developers. Favors development over forest management. (Jim Robbins, Rep. Thomas Saviello, Erik Charles)

COMMENT: Buyers can avoid the rule by obtaining a subdivision permit prior to heavy harvesting. This will encourage sprawl and forest fragmentation. (Jim Robbins, Fred Huntress)

COMMENT: Eliminate the subdivision review exemption for 40 acre lots. In organized towns that exempt 40 acre lots, create a state subdivision requirement, waived if the local rule is as strict or more strict. (Duane Nadeau)

RESPONSE: The Legislature specifically directed that the rule exempt permitted land use conversions. The rationale for this exemption is that the permitted conversion has been through some form of review by a regulatory body (e.g., municipal planning board), and the reviewing body had the opportunity to explore and mitigate any forest

resource impacts. The amount of land exempted is limited to the footprint of development, or no more than 5 acres in the case of subdivision lots. Imposing a requirement that the retained portion of converted land be well-managed goes beyond the legislative direction. MFS will continue to monitor the situation to evaluate how the regulated community responds to the rule.

Section 5.I. Common and undivided land transfers

COMMENT: The exemption for sale of common and undivided ownerships baffles me. As written, I can interpret it as an exemption to all parcels held in common and undivided ownership. Is this an exemption for lands owned in "trust"? Does this mean that any parcel harvested beyond the standards can be transfer to a trust without penalty?

RESPONSE: The purpose of the exemption is to allow common and undivided ownerships to conduct transfers within the ownership. Such transfers are very common and should not be subject to the rule.

Additional Exemptions

COMMENT: Add exemption for land held for 5 years (Plum Creek, MFPC)

RESPONSE: This "exemption" should be obvious from the definition of liquidation harvesting. However, it is stated explicitly in the revised rule.

COMMENT: Need an exemption for conservation sales (Wagner Woodlands)

RESPONSE: MFS disagrees. MFS does not want to provide an incentive to conduct liquidation harvesting if the landowner is contemplating a conservation sale to non-profits and/or governmental entities.

COMMENT: Consider exempting all land enrolled in the Tree Growth Tax Law program. These lands, by law, are already managed in accordance with long term forest management principles, and no factual basis exists to conclude that those lots are not being managed in accordance with their respective written forest management plans. (Mead Westvaco, Herbert C. Haynes, Jr.)

RESPONSE: MFS considers this proposed exemption too broad. A number of Tree Growth Tax Law properties have been subjected to liquidation harvesting and/or been the subject of enforcement actions for violations of the Forest Practices Act, Protection and Improvement of Waters Act, Erosion and Sedimentation Control Act, and local shoreland zoning ordinances. Despite these obvious problems and the inconsistency with the purpose of the Tree Growth Tax Law, these parcels are allowed to remain in the program. MFS will continue to evaluate harvesting practices on all lands across the state. If recent modifications to the Tree Growth Tax Law show positive impacts in improving the management of lands enrolled in the program, MFS will consider this suggestion when the rule is reviewed for effectiveness.

COMMENT: Consider an exemption from responsibility for liquidation harvesting for loggers who do not have an ownership interest in the land. (Linda Griffin)

RESPONSE: MFS does not believe that this exemption would support the purpose of the rule. A logger has a professional responsibility and an ethical obligation to

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understand and comply with the state's land use laws and to make clients aware of those laws. A logger asked to participate in an activity that the logger believes may violate the law should inform the landowner or land manager of the consequences of such activity and should, if necessary, disassociate from the activity.

COMMENT: Licensed foresters should be exempt from the rule. Becoming third party certified would cost me an estimated \$2800.00. The benefit to cost ratio does not work for my business nor do I believe it passes muster with the State Administrative Procedure Act. (Merle Parise)

RESPONSE: MFS does not believe that this exemption would support the purpose of the rule. The forester licensing rules address business practices, not silvicultural practices, and thus are inadequate to achieve the goals of the enabling legislation and rule.

COMMENT: Provide exemption for internal, paper transfers. (Huber Resources, Prentiss & Carlisle, Plum Creek)

RESPONSE: Most of the situations for which the commenters proposed exemptions (in a separate email) are not covered by the rule to begin with. On the advice of counsel, MFS has not added paper transfers as a specific exemption. It will address this issue on a case by case basis.

SECTION 6. HARVEST STANDARDS

COMMENT: Like the 40% limitation, flexibility provided by THP option, forester involvement. (Drew Barton, David Clement) I support a harvest plan signed by a licensed forester for all parcels over 20 acres statewide. (Walter Gooley)

RESPONSE: MFS appreciates the support for its efforts to provide reasonable flexibility in the rule while increasing professional oversight of timber harvesting.

COMMENT: I have been a supporter of harvest planning throughout the stakeholder process. I still believe that this is the best solution to this issue for the administration and on the ground. I envision a process where MFS works in partnership with industry, landowners, and loggers to develop a training program on Commercial Timber Harvesting Operations Planning. This program would be delivered in at least two ways that would improve harvest operations all across Maine, and target what seems to be the problem on the ground: harvest decisions and performance. The first delivery path would be through the CLP continuing education process. MFS has a record of successfully working with industry, landowners, and loggers to improve practices on the ground through this process. I have no doubt we could improve planning and performance on harvest operations. To sell timber in Maine it is a market requirement to participate in this program. The harvest planning course could be a "core course." Everybody would be required to take the course in order to be certified in the CLP program. This would be a broad approach offering a continuous improvement opportunity throughout the state. The second delivery path would be a part of the enforcement action taken by the Department of Conservation in cases of violations of FPA or DEP rules related to timber harvesting operations. This would be a targeted approach to the issue and would minimize unintended consequences. This is the best

approach to forward a thoughtful process in the area of harvest decisions and planning throughout Maine. It would offer a targeted approach to liquidation harvesting.
(McPherson Timberlands)

RESPONSE: The department agrees with this suggestion. It has added an option to this section of the rule. This new option would allow “accredited” loggers and foresters, operating on parcels of 100 acres or less to operate if they successfully complete an MFS-approved training, provided they agree to manage in a way that avoids liquidation harvesting and in compliance with environmental laws. The department will evaluate the effectiveness of this option and review the acreage limitation in 5 years.

Section 6.A. Basal area removal limited

COMMENT: How will anyone know if more than 40% of the basal area of trees was taken, unless the original volume was documented? If stumps are removed, for instance, no one can tell what had been there. Also, the language is vague about limiting damage. Isn't there some more technical description or standard approach to describe the best practices? (Cynthia Stancioff)

RESPONSE: Determining basal area removal will require a stump cruise to determine what was removed, coupled with a cruise of the residual stand to determine what is left. If stumps are removed, documentation of removal becomes problematic; however, such actions are expensive and highly unlikely to occur except in the case of a site conversion. The department has tried to avoid prescriptive language for every facet of the rule (e.g., limiting damage). Silviculture remains both an art and a science, and reasonable people can have reasonable differences about what constitutes an acceptable level of damage.

COMMENT: Allowing 40% basal area removal will allow up to 70% of value to be removed (most or all). (Maine Audubon)

COMMENT: The 40% basal area removal threshold is too strict. We recognize that data was collected during the formulation of the proposed rules, and do not believe that the data indicated that 40% removal equated to “most or all of the commercial value” removal as defined in the enabling legislation. It seems that 51% would be the very minimum threshold for this feature of the rules, and 60% would probably be a far more logical threshold clarifying “most of all.”

COMMENT: If you ask the ordinary person, they will say that “most or all” means over 75%. 40% is not “most.”

COMMENT: 40% threshold in LURC and Shoreland Zoning applies only to a small acreage near water, not the entire landscape. Comparison with Bureau of Parks and Lands harvesting not legitimate; they don't face same pressures as private landowners.

COMMENT: Harvesting can exceed 40% and still be very good silviculture (example of white pine stand originally at 220 sq. ft., thinned to 120 sq. ft.).

(International Paper, Plum Creek, Walter Gooley, Karen Thorndike, Huber Resources, McPherson Timberlands, Ronald Hawkins, Jack Wadsworth, Fred Huntress, Wagner Woodlands, Mead WestVaco, MFPC, Maine Landowners Alliance, Howard Charles,

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COMMENT: Don't like the 40% rule. Basal area is a forester's tool, not a regulatory tool. (Everett Towle)

COMMENT: Good forestry means following silvicultural guidelines and recognizing the A, B, and C lines for maintaining residual stands. Sometimes it is practical to remove more than 40% of a stand, and sometimes a clearcut is needed to start a new stand. (Walter Gooley)

COMMENT: There are positive aspects to this option. Averaging the harvested merchantable volume over the parcel will give landowners the flexibility needed to develop appropriate silvicultural prescriptions. Averaging the harvest over the parcel will reduce the complexity for enforcement, as compared to current FPA rules that require even distribution of timber on a per acre basis. (Plum Creek)

COMMENT: The requirement that harvesting activities include reasonable measures to protect advanced regeneration is a positive approach but should be evaluated in terms of regeneration needs for the site. For example, regeneration is not a factor on light improvement cuts leaving high residual basal areas. We raise this issue because it has equal weight with the 40% basal area removal criteria in determining if a violation has occurred. The provision for protecting advanced regeneration gives this option the potential to be either a very effective deterrent to liquidation or an unreasonable requirement. (Plum Creek)

COMMENT: Delete Section 6. A. Option 1 in entirety and replace with:
Option 1. Harvest does not create a clearcut as defined in MFS Rule Chapter 20 (Forest Regeneration and Clearcutting Standards) Section 2. A. 5. Timber harvesting on a forested site greater than 5 acres in size shall not result in a residual basal area of acceptable growing stock over 4.5 inches DBH of less than 30 square feet per acre. Timber harvesting activities must include reasonable measures to protect advance regeneration and the use of applicable Best Management Practices. Justification: By not allowing any clearcuts on the parcel for a period of five years, the landowner is forced to leave a residual stand that is capable of further growth and development. The landowner is prevented from removing most or all of the commercial value in standing timber, and so the parcel is not "liquidated." (Mead Westvaco)

COMMENT: The 40% threshold doesn't seek to define liquidation; it merely indicates the level beyond which non-exempt parties need to exercise real care. It makes sense to set the trigger high; otherwise, the trigger will simply become another standard that liquidators hew as close to as possible, just as they have with the basal area requirement in the FPA. Setting the threshold at 40% encourages them to come up with effective harvest plans. This puts the attention where it is required (good planning) and thus goes a long way toward eliminating the short-sighted practice of liquidation, and the "thinking" behind it. (Roger Milliken)

RESPONSE: If MFS set the bar at 60-75% of basal area, it would frustrate the purpose of the enabling statute, which is to substantially eliminate harvesting that removes "most or all" commercial value in standing timber. Allowing removals at the suggested levels

would allow the status quo to continue. MFS has the same concern about the proposal to limit harvesting to non-clearcut conditions. Most liquidation harvesting leaves a basal area just above the clearcut standard now, so this proposal also would leave the status quo in place. Notwithstanding its concerns, MFS has modified the rule to allow removal of up to 50% of the basal area, provided the harvest avoids high-grading. This will allow removal of much of the commercial value of timber. Landowners still have the option of investing a relatively small amount of money in a THP if they wish to capture additional timber value during a short-term ownership, provided there is a silvicultural justification for the harvest. With respect to protection of advanced regeneration, MFS staff would take into consideration a number of factors on any harvest site, including the amount removed, landowner-stated harvest objectives, distance between trails, rutting, etc., prior to taking any enforcement action. The purpose of the standard is to ensure that, advanced regeneration, where present and healthy, is not unreasonably damaged.

Section 6.B. Timber harvest plan developed prior to harvest

COMMENT: The harvest planning process is too complex. The draft outline plan needs to be simplified. We agree that harvest planning is an excellent and long-lasting methodology that helps eliminate mistakes in forestry and logging practices, and that better harvest planning is a preferred outcome of this entire rule-making process. However, the proposed THP format is likely to be too cumbersome for landowners and/or loggers. We propose eliminating the more subjective or confusing requirements such as:

- requiring stand level descriptions and management prescriptions;
- the requirement to improve timber quality – highly subjective, not always a landowner objective;
- the requirement to address S1 or S2 communities – not widely understood by landowners, loggers;
- the requirement to conserve biological diversity – a term not widely understood by landowners;
- the requirement to provide a rationale explaining how trees will be grown to maturity-subjective;
- requirement to consult with DIFW and MNAP.

We propose that the THP be simplified and focus more on creating awareness and prevention of the visual effects of roadside logging and log yards. (Plum Creek, Wagner Woodlands, Huber Resources, International Paper, McPherson Timberlands, Ronald Hawkins, Steve McLaughlin, Maine Landowners Alliance, MFPC, Rep. Thomas Saviello, Frederick Morton, Herbert C. Haynes, Jr.)

COMMENT: If not conducting a regeneration harvest, shouldn't have to worry about protecting regeneration. (Plum Creek)

COMMENT: The harvest plan standards need improvement to help ensure that young trees are not needlessly harvested before maturity. Need to require reasonable measures to protect advanced regeneration. (Drew Barton, Maine Audubon)

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COMMENT: “Maturity” should be defined by landowner and forester. (Maine Audubon, Edwin Aylward)

COMMENT: There should be standards for regenerating stands under Option 2; regeneration cuts should only be allowed as a last resort when two-stage shelterwood not possible. (NRCM, Pamela Prodan, Maine Audubon)

COMMENT: Clarify definition of “rare, threatened, and endangered” to include plants and species listed as S1 and S2 by Maine Natural Areas Program. (NRCM, NWF, Drew Barton, Maine Audubon, Pamela Prodan)

COMMENT: Need to justify in THP why more than 40% of a stand needs to be removed. (David Clement)

COMMENT: The detail in the required harvest plan exceeds the legislative mandate. (Herbert C. Haynes, Jr.)

COMMENT: Modify this option as shown below:

Option 2. Timber harvest plan developed prior to timber harvest.

Prior to a timber harvest that exceeds the volume removal in Option 1 subject to this rule, a site specific timber harvest plan must be prepared that contains the following elements:

- a. Landowner's name, address, and telephone number.
- b. Designated agent's name, address, and telephone number (if applicable).
- c. Signature and license number of Licensed Forester preparing or approving the plan.
- d. Forest Operations Notification number and the date it was filed.
- e. A stand-specific narrative that includes:
 - i. a description of the pre-harvest stand, including information on approximate stocking, ~~timber volumes~~, timber quality, ~~potential for increases in future timber volume and value~~, an assessment of wind firmness and other stand characteristics relevant to the planned harvest;
 - ii. A silvicultural rationale for the harvest in each stand ~~that explains how the harvest will maintain or improve productivity, including to the extent practicable, given conditions at the time (for example, logging technologies, types of timber expected to be in demand, and other factors) growing stands to maturity, improving timber quality, capturing actual and imminent mortality, enhancing the growth of trees to be retained for future growth, and, when regenerating a stand, creating conditions suitable for the prompt regeneration of the site to commercially valuable species, as well as protecting desirable advanced regeneration.~~ This rationale must also specify actions that will be taken to minimize damage to the residual stand, including without limitation minimizing the area occupied by skid trails and retaining adequate residual stocking to reduce the risk of blowdown.
- f. ~~An assessment of the soil erosion potential of the harvest area; and specification of actions that will be taken to minimize rutting, the potential for soil erosion, and the deposition of sediment into water bodies. These actions should include without limitation~~ Planning the layout of skid trails and yards to minimize erosion, and the use of applicable Best Management Practices.
- g. ~~A description of how the proposed harvest will conserve wildlife habitat and biological diversity, including the results of consultations with the Maine Natural Areas Program and the Department of Inland Fisheries and Wildlife; and based this consultation an explanation of:~~
 - i. ~~How the harvest will conform to standards for the protection of significant or essential wildlife habitat, if any occur in or near the harvest area, and whether the appropriate approvals, permits, or variances, if any are required, have been granted.~~

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- ii. ~~Steps that will be taken to conserve known occurrences of threatened, or endangered species rates and rare or exemplary natural communities rated as S1 or S2 by the Maine Natural Areas Program;~~
 - iii. ~~Other steps planned to conserve wildlife habitat and biological diversity, such as maintaining or promoting the development of snags and cavity trees consistent with logger safety, and protecting sensitive habitats such as vernal pools and deer wintering areas.~~
- h. A description of how the proposed harvest will protect water quality, wetlands, and riparian zones, **and regulated wildlife habitat**, including the use of applicable Best Management Practices.
- i. A stand-specific map prepared at a scale of 1:15,840 (1 in. = 1,320 ft. or 20 chains) or larger. The map should identify wetlands and water bodies, and any **regulated wildlife habitats**, ~~rare or exemplary natural communities, habitats of state and federally-listed threatened, and endangered plants and animals identified on the parcel as required in this section.~~ The landowner must update the map to conform to conditions in the field.

Justification: This simplifies the THP to the point where someone may actually elect this option. As written, it's unlikely. The changes eliminate the subjective and value judgment sections. (Mead Westvaco, McPherson Timberlands)

COMMENT: In the first sentence, add: "Prior to a harvest that exceeds the standard established in Option 1..." This would allow landowners to harvest within the limits of "Option 1" early in the 5 year period and continue to harvest with a harvest plan beyond those standards if the landowners objectives required it. A landowner would not have the cost of a plan on day one to defend against the possibility that a harvest in excess of the standards for Option1 might be necessary in the first five years of ownership. (McPherson Timberlands)

COMMENT: Delete "given conditions at the time (for example, logging technologies, types of timber expected to be in demand, and other factors) growing stands to maturity, improving timber quality." Growing stands to maturity and improving timber quality are a function of landowner objective. These mean different things to different people. The THP needs to be more about harvest process than harvest objective. My second choice to deleting the high-lighted language above would be to change the wording to: "including to the extent practicable considerations such as growing stands to maturity, or..." This would offer flexibility and would not be so focused on harvest and/or landowner objective. (McPherson Timberlands)

RESPONSE: The enabling legislation directed the department to develop a rule that required "measures that include, without limitation, increased professional involvement in planning and implementation of timber harvesting activities on forest lands." The THP requirement is consistent with that direction. MFS has simplified the THP requirements somewhat (e.g., in the biodiversity section), clarified the specific requirements for a silvicultural rationale for both partial harvesting and regeneration harvesting (e.g., clearcutting), and added some specific requirements for mapping. MFS has modified the "maturity" standard to focus on growing trees to sawtimber size. The requirements for consultation with MNAP and DIFW on certain plant and animal species were removed. The revised rule retains requirements to identify, map, and protect known occurrences of threatened or endangered plant and animal species, rare or exemplary natural communities, and significant wildlife habitat and essential wildlife habitat as identified by law.

COMMENT: There is no limit on the percentage of removal if a forest plan is submitted. There are no standards in the rules against which to measure such plans. Thus, all an owner needs is a plan that recommends clearcutting, and he can proceed. Clearcutting makes sense only in limited circumstances, and the burden of proving that those circumstances exist should be on the landowner. (Roger Lee)

RESPONSE: The THP process should result in harvests that are planned, laid out, and implemented far better than is the case for most liquidation harvests now. THP's require attention to the essential principles of long-term forest management and require a well-documented silvicultural rationale for any harvesting, including clearcutting.

COMMENT: The requirement that a forester attest that the harvest has complied with the THP makes no allowance for any deviation in the field, whether intentional or not, from the harvest plan and makes no allowance for changing the THP during the harvest. This is an unreasonable burden on foresters. The rule should allow for substantial compliance with the harvest plan, no one is perfect, and for amendment of the THP based on either circumstances in the field during the harvest or changing landowner objectives or market conditions. (Herbert C. Haynes, Jr.)

RESPONSE: MFS staff typically allow for such flexibility in practice. MFS further recognizes that THP's can be changed during operations, provided the change is legitimate. However, gross departures from a THP, particularly due to changing landowner objectives or market conditions would seem to frustrate the purpose of the enabling legislation and the rule; therefore, a landowner contemplating such significant changes should discuss them with MFS staff prior to making the changes.

COMMENT: Hiring a forester to prepare a THP, supervise, and certify harvests will cost us more money with little benefit. This is the forester full employment act. (Karen Thorndike)

RESPONSE: This comment is addressed earlier in the document. THP's are not expected to result in a significant cost.

COMMENT: Long-term forest management principles were not defined by the Legislature and have not been defined in the proposed rule. Despite this lack of definition, one can avoid the draconian restriction of Section 6.A, which limits a landowner to removal of 40% or less of the volume of trees, by preparing a harvest plan in accordance with 6.B. The silvicultural rationale required in the THP ignores landowner objectives such as recovering the cost of the investment, a return on the investment, interest expense on the investment, taxes on the land and the demands of the wood markets at the time the harvest is conducted. These fundamental economic realities cannot be ignored. The requirement that the THP specify various actions to be taken to minimize soil erosion, minimize damage to the residual stand, protect significant or essential habitat, conserve endangered species, conserve wildlife habitat, protect water quality and prepare a map have nothing to do with whether or not a harvest is done in accordance with long term forest management principles. (Herbert C. Haynes, Jr.)

RESPONSE: The economic issues are addressed earlier in this document. Landowner objectives are important, but the Legislature declared that "[l]iquidation harvesting is

incompatible with responsible forest stewardship, and must be eliminated.” Further, the enabling legislation directed that the rule require timber harvesting on short-term ownerships be conducted with attention to other considerations, such as the public trust resources and public values that liquidation harvesting ignores so often. The Legislature has indicated what it means by long-term forest management principles in 12 MRSA § 8876-A (forest sustainability indicators). These are: soil productivity; water quality, wetlands and riparian zones; timber supply and quality; aesthetic impacts of timber harvesting; biological diversity; public accountability of forest owners and managers; and, traditional recreation. MFS drew from those indicators, its ongoing work to establish forest sustainability benchmarks, and the 2003 field study to identify the principles of long-term forest management that could apply to individual timber harvests in a rule. The THP requirements in the rule focus on soils, water, timber, and biological diversity. The department considers a requirement that a THP address those principles to be reasonable, particularly when heavy harvesting is planned.

Section 6.C. Unforeseen economic hardship

COMMENT: If a person needs money, it will be up to the whims of MFS to make the decision (scary situation – sign up for welfare). (Cliff Foster)

COMMENT: The final decision on appeals should certainly not rest in the hands of the MFS Director. (Robert Libby, Shawn Tewksbury)

COMMENT: Cannot rely upon this section to work. (Jack Wadsworth)

COMMENT: Refine criteria for “hardship” and restrict application to discourage abuses. (Bart Hague)

COMMENT: Unforeseen economic hardship is not defined nor is a process provided to apply for this exemption from the rule. Does this exemption apply to one parcel of land or all parcels owned by the landowner? Is economic hardship specific to the parcel or the landowner? Why allow the exemption only once in 5 years; is a second economic hardship or a hardship which exceeds the value of one parcel less deserving of relief? (Herbert C. Haynes, Jr.)

COMMENT: Is "once in any five-year period" meant to be limited to one parcel only, or could the one-time exception cover several operations simultaneously? (Cynthia Stancioff)

RESPONSE: MFS added this provision to help landowners who might not be eligible for a variance (variance conditions are very strict) and who would suffer great financial hardship if held strictly to the standards of the rule. The rule will be clarified to allow the use of this provision for only one parcel in a 5-year period. MFS staff researched the question of an application process and found no good existing models in any ordinances – in nearly all cases, such applications are decided on a case-by-case basis. MFS takes its responsibilities under this section very seriously and intends to evaluate each case as fairly and equitably as it can under the circumstances. Allowing the use of this provision only once in a 5-year period limits the potential for its misuse.

SECTION 7. RESPONSIBILITY

COMMENT: Concerned about loggers being held responsible for following landowner's instructions or a bad plan prepared by a forester. Should not hold loggers responsible if they do not own the land and are only cutting stumpage. (Karen Thorndike, Ronald Hawkins, Linda Griffin)

COMMENT: Hold foresters accountable for rigorous adherence to spirit and intent of rule. (Bart Hague)

COMMENT: Landowners will require foresters and loggers to carry substantial liability insurance policies – increasing costs. Hard to find it fair to penalize one party for the misdeeds of another, especially if that party followed the rules. (Frederick Morton)

COMMENT: The concept of responsible party is overly broad. (Herbert C. Haynes, Jr.)

RESPONSE: The enabling legislation directed MFS to “apportion appropriate legal responsibilities to landowners, foresters and loggers for compliance with the rules.” MFS has attempted to do that in the rule. In general, landowners are held responsible for violations of land use regulations. In the case of this rule, the specific language of this section is intended to allow MFS to pursue the appropriate responsible party in an enforcement action, not to impose blanket liability on all parties regardless of their individual level of responsibility.

For example, it generally does not make sense to pursue a logging contractor acting at the landowner's direction. Nor does it make sense to pursue a landowner when a forester prepared a THP that does not comply with the rule. There are cases where multiple parties may be involved; for example, if a forester certifies that a harvest has complied with the THP when it has not. Then MFS would need to evaluate if the landowner and/or the logging contractor had any responsibility for creating the violation.

MFS staff will apportion appropriate legal responsibility among potentially responsible parties after careful evaluation of the facts of a particular case. MFS does not intend to hold all parties responsible for a violation unless the facts dictate otherwise.

COMMENT: For the optimal result from this rule, the Forester Licensing Board will have to take a strong role in disciplining foresters who bless inappropriate harvests. I encourage you to consider how MFS may work closely with the board to encourage the forestry profession to adhere to high standards of sustainability. I hope that the Maine Implementation Committee of the Sustainable Forestry Initiative might be encouraged to use their 800 telephone number to further support the board. When liquidation harvests are brought to their attention through the 800 number, I hope they will inform MFS and the board so that they, in turn, can assess the adequacy of the harvest plan. (Roger Milliken)

RESPONSE: The department plans to engage the Forester Licensing Board in a discussion about ways to increase the board's effectiveness in dealing with poor land management practices by Licensed Foresters. MFS agrees with the suggestion about the SFI program.

SECTION 8. VARIANCE

No comments received on this section.

SECTION 9. EFFECTIVE DATE

No comments received on this section.

Appendix 1. List of Speakers Testifying at Public Hearings

Farmington, 23 March 2004

Jon Olson, Maine Farm Bureau
Jim Robbins, Robbins Lumber
Cathy Johnson, Natural Resources
Council of Maine
John Stowell
Walter Gooley, consulting forester
Gordon Gamble, Wagner Woodlands
Fred Hardy
Daryl Flagg, logger
Doug Denico, Plum Creek
Sam Brown, Forest Stewards Guild
Bob Kimber
Karen Thorndike, logger
Drew Barton
Duane Allen, Moosehead Manufacturing
Jenness Robbins
Andy Arey, logger
Susan Aygarn, LandVest
Conrad Heeschen
Pamela Prodan

Ellsworth, 24 March 2004

Peter Triandafillou, Huber Resources
Don White, Prentiss & Carlisle
Ken Lamond, McPherson Timberlands
Jake Maier, consulting forester
Gerald Poulin
Dave Warren
Chuck Ames
Steve McLaughlin
Rick Givens, Maine Sporting Camp
Association

Gordon Mott, forester
Rob Bryan, Maine Audubon Society
Edmund Aylward
Carl Sanborn, Louisiana-Pacific
Ronald Hawkins, logger
Dick Trott
Neil Butler
Peter Phinney
Teresa Davis, consulting forester
Geneva Duncan-Frost
Galen York, logger
Scott Hanington, logger

Gorham, 25 March 2004

Jack Wadsworth, forester
Fred Huntress, forester
Ted Johnston, Wagner Woodlands
Cliff Foster, forester
Lloyd Poulin
Gary Bahlkow, LandVest
Carl Jordan, SAPPI
Everett Towle, forester
Linda Griffin, logger
Chris Bickford, forester
Tony Lyons, Mead Westvaco
Pat Strauch, Maine Forest Products
Council
Charlene Krug, Maine Landowners
Alliance
Andy Irish, logger
Jeff Meserve, forester
Wendell Scribner, logger

Appendix 2.

ECONOMIC AND FISCAL IMPACTS OF THE LIQUIDATION HARVESTING RULE

Prepared by:

Dr. Perry Hagenstein⁹ and Mr. Thomas Walker¹⁰

Overview

This paper addresses the potential economic impacts in Maine of limiting “liquidation harvesting” of timber through the proposed Bureau of Forestry regulation restricting the amount of timber harvesting that may take place on a forested parcel that is held for five years or less. The analysis of the proposed regulation is qualitative in nature due to the lack of quantitative site-specific analysis of economic impacts. Further evaluation of economic impacts would be possible to the extent that such quantitative data is currently available or could be developed, but would likely cost at least \$25,000.

Timber harvests currently occur on about 550,000 acres annually in Maine. Past studies have estimated that annually the timber on 30,000 to 45,000 acres is cut to just above legal limits on newly acquired land and the land is resold within 5 years.¹¹ The proposed rules would substantially eliminate liquidation harvesting (LQH), defined in statute as “the purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale or attempted resale of the harvested land within 5 years.” According to Bureau of Forestry analyses, under current conditions the proposed regulations would likely have the effect of limiting total or nearly total removal of timber on between 10,000 and 20,000 acres annually.¹² The exact acreage affected by the rules in any given year is unknowable as (1) conditions such as the market for land with most or all of the timber removed varies over time; (2) some parcels may qualify for even heavier cutting under the rule than normally occurs under a LQH; and (3) other market forces and logger education may reduce the practice over time even without the rules. The economic impacts of instituting such rules are the net effects of changing from the current timber harvest regime in Maine, which includes this limited amount of LQH, to one in which LQH is substantially eliminated. These economic impacts include:

- changes in economic welfare of timberland owners whose land would have been sold and subsequently subjected to a timber harvest that falls within the definition of LQH;
- changes in economic welfare of timberland owners who provide timber to the market that substitutes for timber no longer available because it falls within the definition of LQH;
- changes in the economic welfare of persons who practice LQH as a business (logging contractors and others) who will no longer benefit from LQH sales;
- changes in regional and state economic welfare brought about by changes in timber and forest products markets due to LQH regulation. These could include positive impacts (e.g., increased timber supply and quality in the long-term), as well as negative impacts;
- changes in real estate markets for forest and cutover land and implications for long-term forest management and development; and

⁹ Forest Economist, Wayland, Massachusetts.

¹⁰ Principal, Industrial Economics, Inc., Cambridge, Massachusetts.

¹¹ Maine’s Forest Practices Act specifies that the trees left after harvest must have a cross sectional area of 30 square feet to avoid creating a clearcut that triggers other regulatory requirements. Mature stands may contain 100-200 square feet of basal area before harvest.

¹² This is less than the 30-45,000 acres cited above because the draft rules contain a number of exemptions, e.g., sales to family members, small lots, small ownerships, etc.

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- changes in costs, both landowner costs and state agency costs, required for implementing the LQH regulation.

The first five points address the economic effects of substantially eliminating LQH as defined in the proposed regulation. The sixth point addresses economic effects of requiring measures that would assure that timber harvesting activities are “conducted with attention to long-term forest management principles.” These requirements are also included in the proposed LQH regulation.

Impacts on Timberland Owners Directly Affected by LQH Regulation

The major cost in owning and managing forests is the opportunity cost of holding the land and timber until their value can be “cash out.” The effect of the LQH regulation is to limit the ability of timberland owners to cash out in the near-term by selling their land to operators who will liquidate the timber and resell the land. These impacts could be avoided if landowners choose to harvest the timber before they sell the land. However, if they are unwilling to do so, returns to the landowner are reduced where the volume and value growth of their timber does not exceed the amount that could be earned in an alternative investment (often expressed in terms of interest rates). This is expected to be a significant cost for certain owners who choose not to conduct, or would be uncomfortable with, a heavy harvest before selling their lands. The magnitude of this cost and the proportion of owners who would be affected can only be evaluated through a detailed analysis of actual or representative parcels that would be affected by the regulation. Mitigating these impacts, however, is the provision of the regulation that exempts current landowners or persons holding land for more than 5 years from the regulation.

The proposed regulation could also have impacts on the timber harvesting costs of affected landowners, although the direction and magnitude of the change will vary depending on the characteristics of the timber on a specific parcel of land. If the wood is mainly sawtimber and harvests are limited to light cuts, costs per unit of harvested volume may actually fall somewhat with LQH regulation because the average tree size would be larger than in timber being liquidated. In contrast, if the timber is pulpwood, costs per unit might be somewhat higher on tracts with LQH regulation because volumes per acre would be smaller. On tracts where harvest plans allow heavy harvests, timber harvesting costs are less likely to be affected.

For parcels which are subject to the rules because they are bought after the rule’s effective date and will be held for less than 5 years, the interaction of increased holding costs with potential changes in harvesting costs makes it difficult to generalize about the magnitude of the net economic impacts to individual landowners. The fact that timber will need to be held longer certainly increases costs, but possible reductions in unit harvesting costs could mitigate these impacts for certain landowners. Moreover, in some cases holding the timber longer could potentially result in a significant increase in harvest value, for example when the longer growth period yields a greater proportion of sawtimber in the harvest. Nonetheless, there likely will be cases where an individual’s economic losses could be significant by comparison with what they could have realized without the rules in place. This would be the case for landowners who do not realize a reduction in costs or increase in value large enough to offset increased costs of holding the timber for a longer period. Overall, however, the Bureau of Forestry analysis suggests that the number of landowners experiencing economic losses of this type will be relatively small given the very limited acreage that will be affected by the regulation.

Impacts on Other Timberland Owners

To the extent that LQH regulation removes timber from markets in the short run, other timberland owners will make up the difference. That is, the volume of timber required by processing plants (pulp mills and sawmills) is unlikely to be affected by the LQH regulation. At the same time, the annual volume of timber removed from the market by LQH regulation is likely to be a somewhat greater proportion of total timber harvests than the proportion of the area removed from harvest each year because the per acre harvests are likely to be larger in liquidation harvests than the average. Even so, the effects on stumpage prices are likely to be negligible because the total volumes affected are expected to be small (i.e., no more than a few percent of total timber harvests). The net impact on these other timberland

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owners will be positive and, although small in total, possibly significant for individuals whose timber would be harvested sooner than would be the case in the absence of the LQH regulation.

Other timberland owners who buy land after the effective date of the rules and who are not sure if they will hold the land for at least five years could also be effected as they may elect to harvest more lightly than they would have without the rule to keep their sale options open. Alternatively, they may incur the costs of preparing a harvest plan if they want to harvest heavily and still have the option to sell available to them. The acreage of lands affected in this way can not be determined with available information.

Impacts on Logging Contractors

The other category of individuals whose economic well-being could be negatively affected by eliminating LQH sales is the logger who will no longer be able to acquire tracts for LQH. Currently, loggers who purchase land, liquidate the timber, and resell the land are reported to earn higher profits than loggers who simply contract with landowners for harvesting services. The higher return may be attributable to several factors. First, there may be added costs and risks associated with marketing and reselling the cutover land, for which the logging contractor requires a greater share of the total economic return. Second, the logging contractor may simply have more information about the true value of the timber and cutover land than the landowner. The net result is a higher rate of return for the LQH logger who can successfully resell the cutover land.

Under the proposed regulations, profits for loggers who use the LQH business model are likely to fall. The opportunities will no longer be there to earn the higher returns that result from taking on the additional risks of marketing and reselling heavily cut land. The aggregate economic impact on logging contractors, however, will be mitigated to some extent because logging activity, rather than being reduced, is simply shifted to other lands producing the timber that would otherwise have come from LQH harvests.

Impacts of LQH Regulation on Regional and State Economic Welfare

Effects of LQH regulation on regional and state economic welfare will occur mainly through markets for timber and forest products and for forested real estate. Inasmuch as the area of timberland harvested and volume of timber likely to be affected by LQH regulation are small, the short-run economic welfare effects will be negligible at the state level. Any increases in wood prices are expected to be minimal given the small portion of annual harvest volume that is expected to be affected by the proposed regulation. Here it is important to note that the draft rules do not prohibit timber harvesting even if lands are to be held for 5 years or less; they just require that the harvest be less than 50% of the parcels original volume or have a silvicultural basis. While some individuals may experience losses and some gains, no significant net economic impacts are anticipated. While there is certainly a possibility for some localized reductions in economic activity, these would likely be counterbalanced by increases in economic activity in the areas where wood is cut to replace the liquidation harvests.

LQH regulation is predicated in part on its longer-term positive effects on forest management and the retention over time of a timberland base to support and maintain a strong forest-based economy. While the area affected by such regulation, even over many years, is likely to be small, the idea still has merit. Prohibition of LQH should improve the quality and long-term productivity of lands that would have been subject to this practice, both from the forestry and the wildlife/recreational perspectives.

Changes in Markets For Forested and Cutover Land

One concern expressed by landowners is that regulations on LQH will depress land and asset values across Maine. The argument is that LQH contractors set the marginal price for timberland and that current market valuations of timberland reflect the higher returns that can be earned in the timber is liquidated. Consequently, some landowners expect that implementing the new regulations will result in lower valuations and reduced land sale prices because the higher returns from LQH will no longer be there.

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In our view, the impact of LQH regulation on real estate markets for forested land is likely to be small. As noted above, we expect economic returns to fall for certain landowners no longer able to cash out through sales to LQH contractors. Nonetheless, Bureau of Forestry studies suggest the land area affected by LQH regulation will be a small proportion of the total timberland harvested annually in Maine. As a result, while elimination of LQH sales will affect the market value of a relatively small area of timberland that might have been harvested under the LQH business model, it is not appropriate to conclude that all timberland will transact at lower values. The reason for this is that the market for heavily cut land is limited. Consequently, only a portion of the landowners would be able to realize the higher asset valuations that would be associated with LQH. Once the market for heavily cut lands is saturated, remaining land transactions would occur at prices that reflect returns from more sustainable harvest practices.

To the extent that there are any effects on forest land asset values, they are likely to be localized. In the parts of Maine with active markets for developable land, cutover land following liquidation harvests is likely to be at the low end of the price range. In the unincorporated townships, where the primary use of forest land is for growing timber, prices for cutover land are typically very low because of the long time needed to grow a new crop of timber to commercial size. The exceptions in real estate markets to these general rules occur in cases where information on the true value of the land for development or for growing timber is not known to potential buyers. In either case, land is likely to be available to the market whether or not LQH regulation exists and some of it (where harvest plans justify a heavy harvest) will still be largely stripped of its timber. Thus, prohibiting LQH will reduce the proportion of low-priced, low-value forest land available for sale, but not eliminate it.

Changes in Funds Required For Implementing LQH Regulation

In addition to substantially eliminating LQH, the proposed LQH regulation requires "increased professional involvement in planning and implementation of timber harvesting activities on forest land" in Maine. The proposed regulations require that timber harvesting "be conducted with attention to long-term forest management principles," with some exceptions or exemptions for timberland owners of minimum acreages or who have already demonstrated attention to these principles. While the details of these requirements are not clear, it is evident that two categories of costs would increase. One is the cost to some timberland owners of planning and of applying the indicated management principles. The other is the cost to the state regulatory agency or agencies of overseeing, monitoring, and providing professional guidance.

An increase in planning and timber management costs incurred by timberland owners is likely as a result of the proposed requirements in the LQH regulation. These costs, estimated by the Bureau of Forestry to be between \$3 to \$5/acre, will fall largely on the owners of timberlands that would undertake LQH if these rules were not in existence. The degree of this increase will depend on 1) the specific requirements that are adopted and 2) the extent to which the state will provide assistance, either financial or technical, to the owners. Certain policy options that are currently under consideration, such as tax breaks for holding timberlands or the use of a revolving funds to finance forest planning, could mitigate the impacts of such cost increases. Moreover, to the extent that better timber management results in increased economic returns to landowners, added costs also might be recovered.

The extent to which state agency costs will increase on adoption of the LQH regulation is also uncertain, but the Bureau of Forestry estimates that enforcing only the light harvest provision of the rules will require from 4 (this assumes that approximately 3,000 acres need to be inspected and/or cruised for potential violations) to 9 (this assumes that approximately 8,000 acres need to be inspected and/or cruised for potential violations) full-time equivalents, at a cost of between \$255,000 and \$570,000. Monitoring harvesting activities more generally to prevent abuses of the exemptions and harvesting options, as well as investigating questionable harvest plans will require additional time for the MFS; but since the agency reports that it has no experience with these specific activities, the magnitude of the work involved can not be accurately predicted at this time. As no new funds for these efforts are anticipated, implementation of the LQH rule is expected to reduce the amount of time and effort that can

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be put into other activities such as logger and landowner training, enforcement of other laws, education, and landowner assistance. Consequently, there will be a real added cost attributable to the LQH regulation, even if it is met by shifting personnel and financial support from other agency programs.

Summary

We expect that the overall net economic effects of the proposed LQH regulation will be minimal because the regulation itself is expected to affect harvests on only a small amount of acreage in Maine each year. However, these effects will be felt differently across different types of timberland owners, logging contractors, and possibly across localities. Those timberland owners who buy land after the effective date of the rule and hold it for less than 5 years will lose an opportunity to “cash out” their timber value quickly with liquidation harvests, resulting in reduced short-term income. Some others will have increased short-term income (a substitution effect as the markets seek timber to replace the harvests that would have come from liquidation sales). Logging contractors who employ the liquidation harvest business model will also see a reduction in their economic returns. The LQH regulation may also lead to some longer-term improvements in forest conditions by improving and increasing long-term productivity (both quantity and quality of timber and the economic situation of some timberland owners and have some long-term benefits for local economies. These improvements will be accompanied by certain short-term costs to timberland owners whose harvests will be shifted to the future and to state agencies, which will bear the costs of implementing the regulations.

Appendix 3. List of Acronyms Used in this Document

DEP:	Maine Department of Environmental Protection
DIFW:	Maine Department of Inland Fisheries and Wildlife
DOC:	Maine Department of Conservation
FPA:	Forest Practices Act (12 MRSA, chapter 805, subchapter 3-A)
FSC:	Forest Stewardship Council
LURC:	Maine Land Use Regulation Commission
LQH:	Liquidation harvesting
MFPC:	Maine Forest Products Council
MLC:	Master Logger Certification
MFS:	Maine Forest Service (aka Bureau of Forestry)
MNAP:	Maine Natural Areas Program
MRSA:	Maine Revised Statutes Annotated
NRCM:	Natural Resources Council of Maine
NWF:	National Wildlife Federation
THP:	Timber Harvest Plan

Appendix 4. Notice of Agency Rule-making Proposal

AGENCY: Department of Conservation, Bureau of Forestry (Maine Forest Service)

RULE TITLE OR SUBJECT: Chapter 23, Timber Harvesting Standards to Substantially Eliminate Liquidation Harvesting (Major Substantive)

PROPOSED RULE NUMBER: LEAVE BLANK - ASSIGNED BY SECRETARY OF STATE):

CONCISE SUMMARY: This rule establishes standards to substantially eliminate the practice of liquidation harvesting. Liquidation harvesting is defined as the purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale or attempted resale of the harvested land within 5 years. Timber harvesting which is inconsistent with the standards of this rule is prohibited on a parcel of land that is sold or offered for resale within five years of the date of purchase of the parcel.

THIS RULE WILL__ WILL NOT ☒ HAVE A FISCAL IMPACT ON MUNICIPALITIES.

STATUTORY AUTHORITY: 12 MRSA, Chapter 805, Public Law 2003, Chapter 422

PUBLIC HEARINGS:

1 - Tuesday, 23 March, 6:00 p.m.- 9:00 p.m., University of Maine Farmington campus, Conference Rooms B&C

2 - Wednesday, 24 March, 6:00 p.m.- 9:00 p.m., White Birches Motel, Ellsworth

3 – Thursday, 25 March, 6:00 p.m.- 9:00 p.m., University of Southern Maine, Gorham Campus, 3rd Floor Bailey Hall

DEADLINE FOR COMMENTS: 5:00 p.m. local time, 05 April 2004

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Appendix 5. An Act to Promote Stewardship of Forest Resources

CHAPTER 422 H.P. 1194 - L.D. 1616

An Act To Promote Stewardship of Forest Resources

Be it enacted by the People of the State of Maine as follows:

PART A

Sec. A-1. 12 MRSA c. 805, sub-c. 3-A, §8866 is enacted to read:

§8866. Purpose

The Legislature finds and declares that the State's forests are resources of great significance to the people of the State. These resources have great economic value, environmental value, scenic beauty and unique characteristics and unsurpassed recreational, cultural and historical values of present and future benefit to the citizens of the State. The well-being of communities of the State depends upon sustainable forest management. Liquidation harvesting is a serious and direct threat to forest management, forest industries and rural communities over the landscape of Maine. Liquidation harvesting produces significant adverse economic and environmental effects and threatens the health, safety and general welfare of the citizens of the State. Liquidation harvesting is incompatible with responsible forest stewardship and must be substantially eliminated.

Sec. A-2. 12 MRSA §8868, sub-§6 is enacted to read:

6. Liquidation harvesting. "Liquidation harvesting" means the purchase of timberland followed by a harvest that removes most or all commercial value in standing timber, without regard for long-term forest management principles, and the subsequent sale or attempted resale of the harvested land within 5 years.

Sec. A-3. 12 MRSA §8869, first ¶, as enacted by PL 1989, c. 555, §10, is amended to read:

To promote a healthy and sustainable forest that contains a balance of age classes necessary for a sustainable timber supply and spatial and compositional diversity, forest harvesting shall be and liquidation harvesting are regulated pursuant to this subchapter.

Sec. A-4. 12 MRSA §8869, sub-§14 is enacted to read:

14. Substantial elimination of liquidation harvesting. The commissioner shall adopt rules to substantially eliminate liquidation harvesting. Rules adopted pursuant to this subsection are major substantive rules as defined in Title 5, chapter 375, subchapter 2-A.

Sec. A-5. Rulemaking regarding liquidation harvesting. No later than February 1, 2004, the Commissioner of Conservation shall provisionally adopt rules to substantially eliminate liquidation harvesting by requiring measures that include, without limitation, increased professional involvement in planning and implementation of timber harvesting activities on forest lands.

Rules adopted pursuant to this section must require that timber harvesting activities be conducted with attention to long-term forest management principles. The rules must include appropriate exemptions, including, but not limited to, exemptions for landowners and land

Basis Statement
Provisionally Adopted Chapter 23 Rule
Standards for Timber Harvesting to Substantially Eliminate Liquidation Harvesting

managers with independent 3rd-party certification, harvests covering small acreages and permitted land conversions. The rules must apportion appropriate legal responsibilities to landowners, foresters and loggers for compliance with the rules.

The Commissioner of Conservation shall consult with the Commissioner of Environmental Protection and the Commissioner of Inland Fisheries and Wildlife to ensure that Bureau of Forestry rules regarding forestry practices are consistent with environmental and wildlife habitat protection.

Rules adopted pursuant to this section are major substantive rules as defined in the Maine Revised Statutes, Title 5, chapter 375, subchapter 2-A and must be submitted to the Legislature no later than February 1, 2004 for review.

PART B

Sec. B-1. Report to Legislature. No later than January 2, 2004, the Commissioner of Conservation shall report to the Joint Standing Committee on Agriculture, Conservation and Forestry with recommendations and an implementation plan for solutions to the issue of liquidation harvesting. The commissioner shall review, at a minimum, the following:

1. Improvements to standards and guidelines for timber harvests;
2. Increased professional involvement in timber harvests;
3. Improved professional accountability of foresters;
4. Modifications to land use laws;
5. Disincentives to liquidation harvesting;
6. Incentives for landowners who receive independent, 3rd-party certification that their forest lands are well managed;
7. Economic policies to expand markets for forest products harvested from well-managed forests and to promote Maine as a world leader in green-certified forest lands and forest products; and
8. Other relevant approaches.

In conducting the review, the commissioner shall solicit input from representatives of the forestry industry, including professional loggers, state agencies, municipalities, industrial and nonindustrial landowners, environmental groups, financial institutions, Legislators and members of the public.

The final report must include proposed changes to existing laws, rules and policies necessary to implement the recommendations.

Sec. B-2. Legislation authorized. The Joint Standing Committee on Agriculture, Conservation and Forestry may report out a bill to the Second Regular Session of the 121st Legislature to implement any or all of the provisions of the plan recommended under section 1 of this Part or revisions to the plan approved by the committee.

Effective September 13, 2003, unless otherwise indicated.